

No. 16117 ✓

United States

*See also
Vol. 3091*

Court of Appeals

for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

SEBASTOPOL APPLE GROWERS UNION,
Respondent.

Transcript of Record

In Three Volumes

VOLUME I.

(Pages 1 to 432, inclusive)

Petition For Enforcement of An Order of
The National Labor Relations Board

FILED

FFB 12 1959

PAUL P. O'BRIEN, CLERK

No. 16117

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

SEBASTOPOL APPLE GROWERS UNION,
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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer of Charging Party to Opposition to Motion to Reopen the Record and for Withdrawal of Charge, or in the Alternative to Dismiss Complaint	190
Answer to Petition for Enforcement.....	209
Certificate of the National Labor Relations Board	202
Complaint (G.C. 9).....	3
Decision and Order.....	197
Erratum Dated March 19, 1956.....	189
Intermediate Report and Recommended Order	15
Conclusions of Law.....	170
Findings of Fact.....	17
Recommendations	171
Motion by Charging Party to Reopen the Record and for Withdrawal of Charge, or in the Alternative to Dismiss the Complaint	185
Motion to Reconsider, Modify or Set Aside Order of Board.....	195

Names and Addresses of Attorneys.....	1
Order Denying Motion to Reopen Record, etc.	189
Petition for Enforcement of an Order of the National Labor Relations Board.....	206
Statement of Points on Which Petitioner Will Rely	208
Transcript of Proceedings and Testimony (Partial)	212
Exhibits For General Counsel:	
9—Complaint	3
19—Report on Challenged Ballots (Par- tial)	1202
25—Copy of Notice “To All Employees” Dated Oct. 14, 1954.....	1204
26—Application for Employment Form 1205-6 Admitted in Evidence.....	263
28—Authorization For Representation Dated Aug. 4, 1954, Orice Storey....	1207
Admitted in Evidence.....	337
30—Receipt For \$2.50 From Dr. Ernest Vieira to Mrs. Orice Storey, Oct. 27, 1954	1207
Admitted in Evidence.....	359
32—List of Employees’ Names and Ad- dresses With Note by Ella Herrerias	1209
Admitted in Evidence.....	457

Transcript of Proceedings—(Continued):

Exhibits For General Counsel—(Continued):

36—List of Employees' Names Read by W. H. McGuire Oct. 15, 1954, Who Were To Be Retained For Work....	1220
Admitted in Evidence.....	751
37—List of Women Production Employees as of Oct. 14, 1954, With Pen Check Marks	1222
Admitted in Evidence.....	755
38—List of Men Production Employees as of Oct. 14, 1954 With Pen Check Marks	1228
Admitted in Evidence.....	755
39—Statement of Leonard J. Duckworth, March 18, 1955.....	1231
40-A, B—Letter Dated Oct. 29, 1954, C. B. Rose, Exec. Sec. California Assn. of Employers to NLRB.....	1238
40-E, F—List of Employees Appearing on Payroll Oct. 2, 1954.....	1241-2
40G—List of Employees on Payroll Oct. 19, 1954	1243
41-A—Letter of C. B. Rose to NLRB, Nov. 16, 1954.....	1245
41-B—Letter of C. B. Rose to NLRB, Nov. 16, 1954.....	1246
41-C, D—Letter of Elmo Martini to C. B. Rose, Nov. 15, 1954.....	1247
41-E, F—List of Employees on Payroll on Evening Shift, Oct. 15, 1954.....	1249-1250

Transcript of Proceedings—(Continued):

Exhibits For General Counsel—(Continued):

42-A—Letter, W. H. McGuire to W. M. Caldwell, Feb. 17, 1955.....	1251
42-B, C, D, E—Employees Who Worked Oct. 15, 1954 on Day and Night Shift	1252-1255
42-F—List of Employees Hired After Oct. 15, 1954 Who Had No Previous Employment With SAGU.....	1256
44—Copy of Day Committee, Sebastopol Apple Growers' Union.....	1257
48-1—Authorization For Representation Under the NLRB Act, Ruth Alber-toni, Sept. 3, 1954.....	1258
Admitted in Evidence.....	799
51—Authorization For Representation Under the NLRB Act, Darlene Rear-den, Oct. 8, 1954.....	1263
52-A, B—Schedule "SAGU Production For Years 1950 Through 1954".....	1264
53A, B—Letter, Errol D. Wilson to NLRB, Apr. 8, 1955.....	1265
53-C—Inventories and Fresh Fruit Ship-ments and Dryer Deliveries.....	1267
53-D—Tons of Apples Delivered to Dry-ers and Processors Canning for SAGU, Production and Transporta-tion Costs	1268

Transcript of Proceedings—(Continued):

Exhibits For General Counsel—(Continued):

55—Letter of Elmo Martini to W. M. Caldwell, Feb. 17, 1954.....	1269
56-A—Letter, Elmo Martini to NLRB, Apr. 7, 1955.....	1270
56-B, C—Schedule of Five Year Averages of Disposals of Fresh Fruit Crop	1271-1272
57—Sales, June 1, 1954 Through Apr. 30, 1955	1273
58—Statement, Feb. 9, 1954—Affidavit of Ella Herrerias	1274
59—Check Stub, Employee's Copy—Gloria Pate, Period Ending 10/23.....	1295

Exhibits For Respondent:

6—Letter, Ella Herrerias to NLRB, Feb. 18, 1955	1295
Admitted in Evidence.....	513
8—Employment Application of Clarence E. Storey, May 24, 1954.....	1297
12—Minutes of Board of Directors of Sebastopol Apple Growers' Union, Oct. 12, 1954	1298
Admitted in Evidence.....	851
13—List of Employees Asked to Report For Work Oct. 18th.....	1300
Admitted in Evidence.....	863
14-A—Schedule of Deliveries and Useage, 1953	1302

Transcript of Proceedings—(Continued):

Exhibits For Respondent—(Continued):

14-B, C—Recap of Deliveries 1953-	
1954	1303, 1304
15-A—Deliveries and Useage, 1954.....	1305
15-B, C, D—Packing Summary to Nov.	
30, 1954	1306-1308
16—Deliveries to Sebastopol Cooperative Cannery, 1954	1309
17—Deliveries to H. A. Rider & Sons, 1954	1312
22—(Partial) Annual Agricultural Report For Sonoma Co. — Fruit and Nut Crops 1954	1313
Admitted in Evidence.....	1093
23—(Partial) Annual Agricultural Report For Sonoma Co. — Fruit and Nut Crops 1953	1314
Admitted in Evidence.....	1094

Witnesses for General Counsel:

Albini, Ernestine	
—direct	657
—cross	661
—recalled, direct	1191
—cross	1192
Bate, Erma	
—direct	419
—cross	427

Transcript of Proceedings—(Continued):

Witnesses for General Counsel—(Cont.):

Bertolucci, Angelo H.

—direct	787
—cross	789
—redirect	793

Byrd, Marjorie

—direct	598
—cross	607

Carrera, Eusebia

—direct	1189
—cross	1190

Castino, Mary

—direct	677
—cross	688
—redirect	693, 696
—recross	695
—recalled, direct	1187

De Font, Gloria Lee

—direct	696
—cross	715

Dickerson, Elsie Elizabeth

—direct	624
—cross	642

Doty, Esther

—direct	742
—cross	743
—redirect	749

Transcript of Proceedings—(Continued):

Witnesses for General Counsel—(Cont.):

Duckworth, Leonard James	
—direct	755
—cross	774
—redirect	775
Grami, William	
—direct	795
Gregori, John Fiori	
—cross	720
Hack, Ernestine	
—direct	430
—cross	434
Hardin, Edna Rosella	
—direct	1188
Herrerias, Ella	
—direct	455
—cross	464, 477
—redirect	487
—recross	511
Layman, Lila Mae	
—direct	436
—cross	454
Lee, Eva M.	
—direct	385
—cross	398
—redirect	401
—recross	401, 403

Transcript of Proceedings—(Continued):

Witnesses for General Counsel—(Cont.):

Lindsay, Gloria	
—direct	663
—cross	672
Martini, Elmo	
—direct	222
—cross	295
—redirect	330
—recross	332
Montafi, Carmelita	
—direct	726
—cross	728
Mounger, Eloyce	
—direct	613
—cross	620
Ploxa, Pauline	
—direct	518
—cross	528
Rawles, Dora	
—direct	538
—cross	547
Rhodes, Roy A.	
—direct	213
—cross	219
Russell, Mary	
—direct	404
—cross	417

Transcript of Proceedings—(Continued):

Witnesses for General Counsel—(Cont.):

Schwartz, Joanne	
—direct	728
—cross	736
Silva, George Lawrence	
—direct	722
—cross	725
—redirect	726
—recalled, direct	1193
—cross	1200
Storey, Clarence E.	
—direct	550
—cross	583
—redirect	594
—recross	595
Storey, Orice	
—direct	333
—cross	371
—recross	384
Tripp, Marie Ruth	
—direct	652
—cross	657
Unciano, Frank	
—direct	515
Witnesses For Respondent:	
Aguire, John C.	
—direct	877
—cross	882

Transcript of Proceedings—(Continued):

Witnesses For Respondent—(Continued):

Bondi, Paul A.

—direct	955
—cross	972
—recross	975, 976

Briggs, Ezra

—direct	826
—cross	841
—recross	843

Caddel, Mary Elois

—direct	1139
—cross	1144

Chicano, Virginia

—direct	1116
---------------	------

Cook, Alfred W.

—direct	1085
---------------	------

Duckworth, Leonard J.

—direct	1101
—cross	1115

Hardin, Edna Rosella

—direct	1150
—cross	1165
—redirect	1168
—recross	1168

Transcript of Proceedings—(Continued):

Witnesses For Respondent—(Continued):

Herrerias, Ella		
—direct	1175	
—cross	1186	
Herrerias, Max		
—direct	893	
Howse, Georgia Louise		
—direct	1125	
Lee, Robert Norman		
—direct	1132	
Martini, Elmo		
—direct	897	
—cross	936	
—redirect	945	
—recalled, direct	1172	
McGuire, William H.		
—direct	845, 863	
—voir dire	860	
—cross	867	
—redirect	875	
Overstreet, William A.		
—direct	1147	
Perry, Elizabeth		
—direct	1095	

Transcript of Proceedings—(Continued):

Witnesses for Respondent—(Continued):

Wilson, Errol David

- | | |
|-----------------|------------|
| —direct | 977, 1031 |
| —redirect | 1074, 1083 |

Williams, Charles Robert

- | | |
|-----------------|-----|
| —direct | 883 |
| —cross | 891 |
| —redirect | 892 |

Winkler, Rollo W.

- | | |
|---------------|-----|
| —direct | 803 |
| —cross | 819 |

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Attorneys for Respondent.

GENERAL COUNSEL'S EXHIBIT No. 9

United States of America

Before the National Labor Relations Board

Case No. 20-CA-1035

SEBASTOPOL APPLE GROWERS UNION

and

GENERAL TRUCK DRIVERS, WAREHOUSE-MEN AND HELPERS UNION, LOCAL No. 980, AFL.

COMPLAINT

It having been charged by General Truck Drivers, Warehousemen and Helpers Union, Local No. 980, AFL, that Sebastopol Apple Growers Union has engaged in, and is now engaging in, unfair labor practices affecting commerce as set forth in the National Labor Relations Act, as amended, 29 U.S.C.A. 141, et seq. (Supp. July 1947), herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twentieth Region, designated by Rules and Regulations of the National Labor Relations Board, Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges as follows:

I.

Sebastopol Apple Growers Union, hereinafter called the Respondent, a California corporation, is

General Counsel's Exhibit No. 9—(Continued) engaged in the business of packing, canning and shipping apples and apple products. Respondent's plant and offices are located at Molino Station, Sebastopol, California. During the fiscal year ending May 31, 1954, the Company purchased raw materials, supplies and equipment valued in excess of \$400,000. During the same period of time the Company sold finished products valued in excess of \$1,000,000, of which amount approximately \$380,000 represented shipments made by the Company from its plant located at Sebastopol, California, to places located outside the State of California.

II.

General Truck Drivers, Warehousemen and Helpers Union, Local No. 980, AFL, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III.

The Respondent terminated the employment of the following employees on or about the dates set forth opposite their names, because they, and each of them, joined or assisted the Union, or engaged in other concerted activities for the purpose of collective bargaining, or other aid or mutual protection:

Orice Storey	September 25, 1954
Elsie N. Dickerson	October 26, 1954
Gloria Pate	October 18, 1954

General Counsel's Exhibit No. 9—(Continued)
IV.

On or about October 15, 1954, the Respondent terminated the employment of the employees whose names appear in Appendix A, attached hereto and made a part hereof, in an attempt to prevent the Union from organizing the employees and to defeat the Union in an election scheduled to be held on October 19, 1954.

V.

On or about October 15, 1954, the Respondent terminated the employment of the employees whose names appear in Appendix B, attached hereto and made a part hereof, because each of said employees had, or the Respondent believed each of said employees had, joined or assisted the Union or engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

VI.

The Respondent, by and through its officers, agents and representatives, whose names are set forth below and on or about the dates appearing hereafter, engaged in the following acts and conduct:

1. On or about September 24, 1954, and on five occasions between the beginning of August 1954 and October 19, 1954, the exact dates of which are unknown, General Manager Elmo Martini threatened and warned employees that the Respondent would close down its plant and cease operations if the employees joined or assisted the Union.

General Counsel's Exhibit No. 9—(Continued)

2. Between the end of July 1954, and October 19, 1954, the exact date being unknown, General Manager Elmo Martini warned and threatened employees that they would be deprived of employment benefits and would be required to work under less favorable conditions if they joined or assisted the Union.

3. In or about the latter part of September 1954, the exact date being unknown, General Manager Elmo Martini threatened an employee with physical assault unless said employee ceased his activities on behalf of the Union.

4. In or about the latter part of September 1954, the exact date being unknown, General Manager Elmo Martini vilified, disparaged, and expressed disapproval of the Union, and employees who joined or assisted the Union.

5. On or about October 25, 1954, General Manager Elmo Martini interrogated employees with respect to their interest in the Union and the manner in which they had voted in an election conducted by the Board.

6. In the latter part of September 1954, and on or about October 13, 1954, General Manager Elmo Martini warned and threatened that Union leaders and adherents of the Union would be discharged.

7. In or about the latter part of August 1954, the exact date being unknown, General Manager Elmo Martini promised employees benefits and privileges

General Counsel's Exhibit No. 9—(Continued)
of employment if they would refrain from joining
or assisting the Union.

8. On or about September 21 and 25, 1954, General Manager Elmo Martini imposed a rule forbidding solicitation, conversation, or activities concerning the Union on Company time or property, while representatives of the Respondent themselves engaged in solicitation, conversation or activities against the Union.

9. In the latter part of July or early part of August, 1954, Floorlady Edna Hardin warned and threatened employees with loss of employment or employment benefits if they joined or assisted the Union.

10. Between September 24, 1954 and October 19, 1954, the exact date being unknown, Floorlady Edna Hardin threatened and warned employees that they would be discharged if they joined or assisted the Union.

11. In about the middle of September 1954, and on three occasions thereafter between on or about October 1, 1954, and October 19, 1954, the exact dates of which are unknown, Superintendent Leonard Duckworth warned employees that the Respondent would close down its plant and cease operations if they joined or assisted the Union.

12. In or about the beginning of October 1954, the exact date being unknown, Superintendent Leonard Duckworth threatened and warned em-

General Counsel's Exhibit No. 9—(Continued)
ployees that their employment would be terminated unless they refrained from joining or assisting the Union.

13. On five occasions from the latter part of July 1954 to in or about the first week in December 1954, the exact dates being unknown, Floorlady Ella Herrerias warned employees that they would be deprived of employment benefits if they joined or assisted the Union.

14. In the latter part of August, the exact date of which is unknown, and on or about October 11, October 13, and October 18, 1954, Floorlady Ella Herrerias threatened and warned employees that the Respondent would terminate the employment of employees who joined or assisted the Union.

15. On or about October 1, 13, and 14, 1954, and on six occasions from in or about the middle of August 1954, to on or about October 19, 1954, the exact dates of which are unknown, Floorlady Ella Herrerias attempted to engage in, and did engage in, espionage and surveillance of Union meetings and of Union activities.

16. Between the beginning of August 1954 and October 19, 1954, the exact date being unknown, Floorlady Ella Herrerias threatened and warned employees that the Respondent had knowledge of the identity of employees who attended Union meetings or otherwise engaged in activities in its behalf, and that the employment of such employees would be terminated.

General Counsel's Exhibit No. 9—(Continued)

17. On or about October 15, 1954, and in or about December 1954, the exact date being unknown, Floorlady Ella Herrerias threatened and warned employees that if they joined or assisted the Union, the Respondent would make working conditions more difficult.

18. In or about the latter part of August 1954, the exact date of which is unknown, and on or about October 13, 1954, Floorlady Ella Herrerias sought to induce employees to engage in espionage and surveillance of Union meetings and activities by promising employees who would agree to do so with employment security and benefits.

19. On an unknown date between approximately August 1954, and October 19, 1954, Floorlady Ella Herrerias threatened and warned employees that the Respondent would close down the plant and cease operations if the employees joined or assisted the Union.

20. A few days before October 15, 1954, Floorlady Ella Herrerias warned and threatened employees that their names would be blacklisted by other employers if they joined or assisted the Union.

21. On or about October 14, 1954, Foreman William Maguire vilified, disparaged, ridiculed, and expressed disapproval of the Union.

22. Between October 9 and October 15, 1954, the exact date being unknown, Foreman Daniel

General Counsel's Exhibit No. 9—(Continued)
Schuster threatened and warned employees that the Respondent would close down the plant and cease operations if they joined or assisted the Union.

23. In or about the latter part of July 1954, the exact date being unknown, Superintendent Darrell Beavers warned and threatened employees that they would be blacklisted by other employers if they joined or assisted the Union.

24. In or about the latter part of July 1954, the exact date being unknown, Superintendent Darrell Beavers threatened and warned employees that the Respondent would terminate their employment if they joined or assisted the Union.

VII.

By the acts set forth in paragraphs III, IV, and V, above, and by each of said acts, the Respondent did discriminate, and is discriminating in regard to the hire, tenure, terms and conditions of employment of its employees, thereby discouraging membership in the Union, and did thereby engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(3) of the Act.

VIII.

By the acts set forth in paragraphs III, IV, V, and VI, above, and by each of said acts, the Respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and did thereby en-

General Counsel's Exhibit No. 9—(Continued)
gage in, and is thereby engaging in, unfair labor
practices within the meaning of Section 8(a)(1)
of the Act.

IX.

The acts of the Respondent set forth in para-
graphs III, IV, V, and VI, above, occurring in
connection with the operations of the Respondent,
described in paragraph I, above, have a close, inti-
mate, and substantial relation to trade, traffic, and
commerce among the several States, and tend to
lead, and have led, to labor disputes, burdening and
obstructing commerce and the free flow of com-
merce within the meaning of Section 8(a)(1) and
(3) and Section 8(6) and (7) of the Act.

Wherefore, the General Counsel of the National
Labor Relations Board, on behalf of the Board, by
the Regional Director of the Twentieth Region, on
this 13th day of June, 1955, issues this Complaint
against Sebastopol Apple Growers Union, the Re-
spondent herein.

[Seal] /s/ GERALD A. BROWN,
Regional Director, National Labor Relations Board,
Twentieth Region.

General Counsel's Exhibit No. 9—(Continued)
APPENDIX "A"

Sebastopol Apple Growers Union

20-CA-1035

Female Production Employees Laid Off 10/15/54

1. Albertoni, Ruth. 2. Allen, Marceline. 3. Ameral, Lina. 4. Ames, Nora. 5. Anderson, Caroline. 6. Angle, Marvel. 7. Antone, Bertha. 8. Antone, Eva. 9. *(Deleted in pencil.) 10. Awender, Karolina. 11. Azevedo, Virginia.
12. Baker, Bonnie. 13. Blair, Ethel. 14. Brickner, Bessie. 15. Bridges, Leona. 16. Bridges, Oma. 17. Brines, Zelma. 18. Brott, Virginia. 19. Browning, Billie. 20. Buhrman, Nina. 21. Byrd, Margie.
22. Cithos, Mary. 23. Clark, Ruth. 24. Coate, Natalie. 25. Coats, Susie. 26. Coffey, Marie. 27. Collins, Marie. 28. Cooley, Elizabeth. 29. Crump, Gatha.
30. Dahl, Evelyn. 31. Davis, June. 32. Edwards, Helene. 33. Eilers, Myrtis. 34. Ellis, Mary. 35. Fenton, Violet. 36. Fletcher, Esther. 37. Floyd, Elsie. 38. Freyling, Marcia.
39. Gaither, Lula. 40. Garrison, Fannie. 41. Hall, Pastoria. 42. Hance, Anna. 43. Hansen, Hazel. 44. Hanson, Ruth. 45. Harrison, Lucille. 46. Hayden, Rose. 47. Herrall, Gail. 48. Hoffschneider, Elsie. 49. Hofland, Theresa. 50. Hontar, Ellen. 51. Hontar, Kathleen. 52. Hope, Laura. 53. Hydera, Marie.

General Counsel's Exhibit No. 9—(Continued)

54. Johnson, Irene. 55. Johnson, Leonor.
56. King, Dolores. 57. Kruse, Viola. 58. Layman,
Lila. 59. Lee, Eva. 60. Lindley, Beaulah. 61. Lind-
say, Gloria.

62. McCarl, Edna. 63. McCarthy, Dora. 64. Mc-
Cullough. 65. McHugh, Elizabeth. 66. McPhee,
Eloyee. 67. Marguez, Mary. 68. Maw, Goldie.
69. May, Mary. 70. Mazzucchi, Nancy. 71. Miller,
Hazel. 72. Morien, Norma. 73. Mynock, Ada.

74. Napier, Renee. 75. Nelson, Irene. 76. Nunes,
Bernice. 77. Offut, Dorothy. 78. Patterson, Marian.
79. Perry, Catherine. 80. Peterson, Cylvia. 81. Pi-
rolle, Esther. 82. Pool, Lorraine.

83. Rearden, Darlene. 84. Roca, Pauline.
85. Ross, Aloa. 86. Row, Julia. 87. Rufino, Margar-
et. 88. Runyon, Lillian. 89. Russell, Mary.

90. Scheffler, Marie. 91. Schrum, Evelyn.
92. Scott, Gertrude. 93. Scott, Merle. 94. Seidel,
Mary. 95. Schields, Viteria A. 96. Souza, Mathilda.
97. Swenington, Amy.

98. Taber, Marion. 99. Tatum, Nancy.
100. Thornton, Lois. 101. Tripp, Marie. 102. Urton,
Etta. 103. Vernon, Amy. 104. Vessels, Stella.
105. Vogel, Anna. 106. Wasin, Edyth. 107. Wilder,
Louise. 108. Wilson, Edith.

109. Bates, Erma. 110. Smith, Jesse (Mrs.).
111. Browning, Doris.

Male Production Employees Laid Off 10/15/55

1. Allman, Lyman. 2. Augustin, Willy. 3. Bate,

General Counsel's Exhibit No. 9—(Continued)
John. 4. Bertoni, Joe. 5. Breuer, Richard. 6. *(Deleted in ink.) 7. Burger, George. 8. Coffey, John.

9. Darden, David. 10. Davis, George. 11. DeVilbiss, Robert. 12. Duncan, Worthy. 13. Foster, William. 14. Fribourghouse, Ernest. 15. Gulledge, Alvin.

16. Heflin, Arthur. 17. Lee, Leonard. 18. McCall, Harry. 19. Marra, Alvin. 20. Mills, Lloyd. 21. Narron, Henry. 22. Neel, Fay.

23. Phillips, Richard. 24. Pozzi, Charles. 25. Rahm, Albert. 26. Reynolds, Richard. 27. Rogers, Gerald. 28. Smith, Joyce W. 29. Storey, Clarence. 30. Swenington, Rudolph.

31. Unciano, Froilan. 32. Weare, William. 33. Kelleher, Gerald.

APPENDIX "B"

Women: 1. Allen, Marcelline. 2. Ameral, Lina. 3. Ames, Nora. 4. Anderson, Caroline. 5. Antone, Eva. 6. Awender, Karolina. 7. Bridges, Leona. 8. Bridges, Oma. 9. Brines, Zelma.

10. Cihos, Mary. 11. Clark, Ruth. 12. Coate, Natalie. 13. Coffey, Marie. 14. Eilers, Myrtis. 15. Ellis, Mary. 16. Fenton, Violet. 17. Fletcher, Esther. 18. Garrison, Fannie.

19. Hall, Pastoria. 20. Hance, Anna. 21. Hansen, Hazel. 22. Hayden, Rose. 23. Hydera, Marie. 24. Johnson, Leonor. 25. Kruse, Viola. 26. Layman, Lila. 27. Lee, Eva. 28. Lindley, Beulah. 29. Lindsay, Gloria.

30. McCarl, Edna. 31. McPhee, Eloyee. 32. Marguez, Mary. 33. May, Mary. 34. Miller, Hazel.

General Counsel's Exhibit No. 9—(Continued)

35. Mynock, Ada. 36. Nelson, Irene. 37. Offut, Dorothy. 38. Pool, Lorraine. 39. Russell, Mary.
40. Scott, Gertrude. 41. Shields, Viteria A.
42. Tripp, Marie. 43. Urton, Etta. 44. Vernon, Amy. 45. Vogel, Anna. 46. Wasin, Edyth. 47. Wilder, Louise. 48. Bate, Erma.

Men: 1. Bate, John. 2. Coffey, John. 3. Friebourghouse, Ernest. 4. Lee, Leonard. Rahm, Albert. 6. Reynolds, Richard. 7. Storey, Clarence.

United States of America

Before the National Labor Relations Board

Division of Trial Examiners

Branch Office

San Francisco, California

Case No. 20-CA-1035

Sebastopol Apple Growers Union and General
Truck Drivers, Warehousemen and Helpers
Union, Local No. 980, AFL-CIO.

Case No. 20-RC-2637

Sebastopol Apple Growers Union, Employer, and
General Truck Drivers, Warehousemen and
Helpers Union, Local No. 980, I.B.T.C.W. &
H. of America, AFL-CIO, Petitioner.

INTERMEDIATE REPORT AND RECOM-
MENDED ORDER

David Karasick and Robert Magor, for the Gen-

eral Counsel. Tobriner, Lazarus, Brundage & Neyhart by Robert LeProhn, of San Francisco, Calif., for the Union. Severson, McCallum & Davis, by Nathan R. Berke, of San Francisco, Calif., and W. M. Caldwell, of San Francisco, Calif., for the Respondent.

Before: James R. Hemingway, Trial Examiner.

Statement of the Case

The complaint, in the case first above named, duly issued on June 13, 1955, alleges a violation by the Respondent, Sebastopol Apple Growers Union, of Sections 8 (a) (1) and (3) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. The Respondent's answer, filed on June 28, 1955, denies the commission of such unfair labor practices. On July 14, 1955, the National Labor Relations Board, herein called the Board, ordered that a hearing be held on challenged ballots, report on challenged ballots, and exceptions thereto in the above-entitled representation case. By order of the Regional Director of the Board, Twentieth Region, the two cases were consolidated for hearing. As the Board did not direct that a report be issued in the representation case, I have not taken up the issues in that case except to the extent that they are required to be decided in the complaint case. It will be found, however, that most of the issues raised in the representation case are decided herein.

Pursuant to notice, a hearing was held before the undersigned, duly designated Trial Examiner at

Santa Rosa, California (with the exception of one day's hearing in San Francisco) commencing on July 19 and concluding on October 17, 1955. At the close of the hearing, the General Counsel argued orally. Time was set for the filing of briefs and the time was several times extended. On December 23, 1955, briefs were received from the General Counsel and the Respondent.

From my observation of the witnesses, and upon the entire record in the case, I make the following:

Findings of Fact

I. The business of the Respondent

The Respondent is a cooperative California corporation engaged in the business of packing, canning, and shipping apples and apple products. The Respondent's principal plant and offices are located at Molino Station, Sebastopol, California. During its fiscal year ending May 31, 1954, the Respondent purchased raw materials, supplies and equipment valued in excess of \$400,000. During the same period of time, the Respondent sold finished products valued in excess of \$1,000,000, of which amount approximately \$380,000 represented shipments made by the Respondent from its plant at Sebastopol, California, to places located outside the State of California.¹ No issue was raised on jurisdiction.

¹ Sales of canned goods in the period from June 1, 1954 through April 30, 1955, amounted to approximately \$1,480,000. In addition thereto the Respondent shipped about 5770 tons of fresh picked apples having a farm value of about \$380,000, and sent to

I find the Respondent to be engaged in commerce within the meaning of Section 2 (6) and (7) of the Act and I find that it will effectuate the policies of the Act to assert jurisdiction.

II. The labor organization involved

General Truck Drivers, Warehousemen and Helpers Union, Local No. 980, AFL-CIO² affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, herein called the Union, is a labor organization admitting to membership employees of the Respondent.

III. The unfair labor practices

A. The issues involved

The complaint, including amendments thereto made at the hearing, alleges numerous instances of interference, restraint, and coercion in violation of Section 8 (a) (1) of the Act. The violations of Section 8 (a) (3) stated in the complaint are alleged to consist of discrimination in the termination of employment of numerous employees. Three of such employees, Orice Storey, Gloria Pate, and Elsie Dickerson, are alleged to have been discharged on September 25, October 18, and October 26, respectively in the year 1954. But some 146 employees are dryers about 866 tons having a value of about \$38,000. Presumably the same proportion of out-of-state shipments continued.

² The complaint was issued before the AFL-CIO merger. The name is herewith amended to show the designation of the new parent organization.

contended to have been laid off on October 15, 1954, in an attempt to prevent the Union from organizing the Respondent's employees and to defeat the Union in a Board conducted election held on October 19, 1954. This list includes both union and non-union employees. Those of this group who had indicated adherence to the Union are contended to have been discharged for the additional reason that they had, or the Respondent believed they had, joined or assisted the Union or engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. The Respondent contends that the terminations of October 15 were made pursuant to normal seasonal practices. At the election of October 19, the Respondent challenged 100 ballots, most of which were cast by employees whose employment was terminated on October 15, 1954. Whether or not such ballots are to be counted will depend in large measure upon the resolution of the issue concerning discrimination under the alleged violation of Section 8 (a) (3) of the Act.

B. Background events and alleged interference, restraint and coercion

As all of the events related herein occurred during 1954, it will be understood that all dates herein referred to without year were in 1954 unless otherwise stated.

The Respondent's 1954 canning season opened on July 15 when the day shift began operating. The night shift started on July 20. On July 28, that year, Angelo Bertolucci, president of the Union and

Roy Rhodes, the Union's business manager and secretary-treasurer, went to the Respondent's office and asked to speak with Elmo Martini, who had become the Respondent's general manager the first of the year. Martini had known both of them for some time. Rhodes, according to Martini, had been business agent "at one of my former plants." He greeted them with "What the hell are you doing here, Roy and Ange?" Rhodes said that the Union had quite a few people signed up, that they wanted to be organized. Martini told them to come back in about 2 years. Rhodes asked if Martini would mind if he talked with the employees. Martini, who understood that Rhodes wanted to go into the plant to sign up employees, refused permission to do so but told Rhodes that he could do whatever he wanted to outside of the premises. Rhodes said that, as the Respondent was having a meeting of the board of directors that night, he would like Martini to bring the matter before that board to see what they thought about the Union's request to organize. Martini agreed to do so. Martini and the two union representatives then went to a nearby store for a cola drink where they engaged only in social conversation.

At the meeting of the board of directors that night, Martini reported the visit of Rhodes and Bertolucci. The minutes of the meeting record that "considerable discussion was held in this regard," but the minutes do not detail the discussion and none of those present who testified could remember the nature of it other than Martini's report of the

visit and questions which the directors asked of Martini about the visit. However, the minutes mentioned that "Briggs [director Ezra Briggs, who was also chairman of the board of directors of the Sebastopol Co-operative Cannery] suggested that the manager contact Mr. Jack Rossi * * * who was an expert on matters of this type to find out what favorable action we could take to discourage the AFL from causing any disturbance among our employees."

During, or for the week ending July 31 the Respondent raised its rates of pay over and above the usual 5-cent annual increase given at the opening of the plant. On about August 4, after Bertolucci was informed by employees of the wage increase, Rhodes telephoned Martini to learn the answer to his request to speak to the employees, and in the conversation Rhodes asked if Martini had given the employees a raise. Martini answered that he had. Martini gave conflicting testimony about the date when the Respondent decided to give the increase. It is clear that it was made effective for work performed in the week ending July 31, and checks in payment therefor would normally have been given to the employees on the Wednesday following the end of the week—i.e., on August 4, 1954. When originally asked about the date of the granting of the increase, Martini testified that the date when the increase was granted "was immediately after the checks were issued to the people" for the pay period ending July 24 and after some of the women on the night shift called his attention to the fact that they

had not received an increase. Checks for the pay period ending on July 24 would normally have been issued on Wednesday, July 28. At the time he gave this testimony, Martini testified that the pay-day was either Monday or Tuesday. In his later testimony he set the date of the grant of the increase as July 26 or 27, which would have been before, rather than after the pay checks were issued for the week ending July 24. In view of his earlier testimony and of the improbability that he would have given an unusual general increase without approval of the board of directors, I find that the increase was not given before the night shift received their pay checks on the night of July 28 for the preceding week. The result was an increase in rate from 85 to 95 cents an hour for the day shift and from 95 cents to \$1 an hour for the night shift. The complaint did not allege and so I do not find that the grant of this increase was an unfair labor practice. But timing of the increase in pay does indicate an attempt by the Respondent to eliminate one reason for the desire of its employees for union representation.

C. Interference, restraint, and coercion

The General Counsel adduced evidence of statements made by various supervisors of the Respondent, some tending to prove specific allegations of the complaint, some apparently to show knowledge by the Respondent of the identity of employees favoring the Union, and others evidently intended only to disclose a general attitude on the part of the Re-

spondent toward the Union. To the extent that the evidence performed any of such functions, I shall relate it, without separation, as nearly as possible in chronological order. However, only as specifically stated hereinafter do I find such statements to constitute interference, restraint, or coercion in violation of Section 8 (a) (1) of the Act.

Gloria Pate had been employed by Respondent during a period extending from July 15 to October 18, 1954. During a few earlier seasons she had worked at another cannery, Manzana, under the supervision of Darrel Beavers. Beavers had become the Respondent's superintendent before Pate was hired there, but he left the Respondent's employ early in August 1954. Shortly before he left, he asked Pate to come to his office during her recess period. When she came, Beavers told her that he wanted to talk to her about the Union, that the Union was going to be starting up there soon, and that Pate was supposed to have had something to do with the Union at Manzana. He said he did not know or want to know if she had or not, that that was her business, but that "they asked me here if you had anything to do with the Union and I told them no * * * because I don't want you to lose your job and I know that you would lose your job if I had told them yes."³ Beavers went on to say that he thought she would be blackballed if she returned to Manzana "because of the Union before." He said he did not want her to tell him anything about

³ The quotation is from Pate's testimony. Beavers did not testify.

the Union but advised her not to get out in front and start anything when the Union came out there (to the Respondent's) because it would "be bad on" him and that Pate would get fired. He told her not to say anything to anyone and that he was telling her for her own good. Although the tenor of Beavers' remarks indicated an intention on his part to be personally neutral in the matter of the Union, he was, at the time, in a position authoritatively to express the views of the Respondent. His statement that Pate would be discharged if her connection with the Union were revealed to the Respondent or if she got out in front and started anything when the Union came out there would clearly have a coercive tendency, and I find that, by Beavers' statement, the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. The meaning of Beavers' statement that Pate would be blackballed at Manzana is not entirely clear. The word "blackball" presumably could mean that the Respondent would notify Manzana of Pate's activity on behalf of the Union so that Manzana would not re-employ her. But it could mean merely that Manzana would refuse her employment because of her union connections even though the Respondent had no part in the blackball. Beavers did not expressly say that the Respondent would blackball Pate, and the expression "because of the Union before" suggests that he thought Manzana would deny her employment because of her union activities while she was still working at Manzana. She

testified that she had in fact been active in the Union at the latter place. In view of the quoted words, I deduce that the latter was Beavers' meaning. Although in the related conversation Beavers disclaimed knowledge of Pate's union activities at Manzana, there is reason to believe that he suspected, if he did not in fact know, that she had been active in the Union there. I find that Beavers did not threaten that the Respondent would blackball Pate but merely expressed his opinion of the attitude Manzana would adopt.

Orice Storey, whose discharge on September 25 will be hereinafter related, testified that when she was leaving work after the day shift on August 4 she saw Superintendent Leonard Duckworth (Beavers' successor) and Charles Williams, night foreman of the cannery, walking behind two men in a direction away from the plant toward the highway. The two men being followed, one of whom was Bertolucci, were passing out authorization cards and literature for the Union. She testified that when the two union men reached the highway, Duckworth and Williams came back and stopped at the car which her husband was driving and in which she and employee Marjory Byrd were riding, that Duckworth handed her two union application cards and said, "As you leave, hit that man [indicating one of the union representatives] with these," and that Williams said to her husband, Clarence Storey, who was also an employee, "As you leave do us a good turn and run over that man." Clarence Storey's testimony about the incident differed only

slightly. He testified that as he was driving out of the parking lot on August 4 he stopped the car when he came to the point where Williams and Duckworth were, that Duckworth handed his wife the two cards but that he did not hear Duckworth say anything. He testified, however, that Williams said to him, "Storey, do your country a good deed and run over that guy." Bertolucci testified that, the first time he was at the cannery to distribute literature, he was at the cannery door with two girls and a man when Williams came to him after about 10 minutes and said that they were on company property, that the company did not allow that (or did not like to have them doing that there) and to get back to the highway. Bertolucci testified that the union representatives then all went back on the highway. Duckworth and Williams denied the incident as related by the Storeys but made no reference to the incident related by Bertolucci. I find the incident to be substantially as testified by the two Storeys but find that the evidence is only illustrative of the attitude of the Respondent toward the Union and is not an unfair labor practice in itself.

According to Gloria Pate⁴ and Gloria Lindsay,⁵

⁴ When Pate testified, she went by her married name, Gloria DeFont. I have used her maiden name because in the testimony, exhibits, and Respondent's personnel records she was so called and it will avoid confusion to use that name throughout.

⁵ Pate and Lindsay were both on what was called the Union committee, the function of which was to promote interest in the Union. Edna Hardin, the 1954 day-shift floor lady testified that, when talk of

who were employed by the Respondent in 1954 before it reduced to a single shift, Martini was accustomed to stop at the spot where they were working to chat with them. Lindsay testified that another employee, Mary Castino, was present but did not participate in the conversations testified to. On one occasion, the date of which Lindsay fixed as just after they had received their union pledge cards,⁶ which would mean shortly after August 4, Martini asked them, according to Pate's testimony, which was similar to that of Lindsay, what they thought about the Union (Lindsay testified and Martini denied that he asked if they "were for the Union.") and they replied that they thought it was "a pretty good deal." Martini then, according to Pate, told them they did not know what they were getting into, that the Union was not as good as they thought it would be, that they might receive more money (i.e. higher wages) but that they would have to pay out so much (i.e. in dues and initiation fees) that it would not matter much one way or the other. He told them, according to both Lindsay and Pate,

the Union first started, she learned that Pate, Lindsay, and a third employee were agitators for the Union and so reported to Superintendent Duckworth.

⁶ Pate testified that Martini frequently spoke to them at their places of work after they had received their pledge cards but she was not so certain of the time of the conversation here related. Sometimes, according to Pate, Martini would tell them that their friends (referring to the union organizers) were outside and would ask what their friends had to say to them.

that each year the employees were given an increase of 5 cents an hour. Pate commented that "next year we'll be making a whole dollar an hour," and that Martini replied that "that's right * * * maybe even more" and that he told them to think it over. Martini denied having made the statements attributed to him by Lindsay but did not deny Pate's testimony of what he said. I find the conversation to be substantially as testified by Pate. Except for the opening question asked by Martini, his statements were permissible opinions and argument. The question, (what they thought about the Union) on its face, carried no implied threat. Except for subsequent events, it might be considered harmless. But Lindsay and Pate were among those whose employment was terminated in the layoff shortly before the Board-ordered election. Although, at the time he questioned them, Martini may have entertained no ulterior motive in asking Pate and Lindsay what they thought about the Union, the evidence herein-after related of discrimination against known union advocates is such that all questioning of employees about the Union assumes the appearance of a composite effort by the Respondent to identify union advocates for discriminatory purposes. In view of this, Martini's questioning cannot be passed off as an isolated instance of interrogation.⁷ Accordingly, I find that by such questioning the Respondent interfered with, restrained, and coerced its employees

⁷ N.L.R.B. v. Syracuse Color Press, Inc., 209 F. 2d 596 (C. A. 2); N.L.R.B. v. Late Chevrolet Company, Inc., 211 F. 2d 653 (C. A. 8).

in the exercise of the rights guaranteed in Section 7 of the Act.

Lindsay testified to another conversation with Martini in September. Pate testified to substantially the same statements of Martini but at a different date. Since both girls testified to the presence of the other, I infer that they were testifying to the same occasion but were unable accurately to fix the date. Lindsay testified that, in the September conversation, Martini said that "if the plant would go Union that he'd close it down, that he'd lose too much money if it went Union, that he'd closed⁸ his plant here in Santa Rosa on account of the Union." Pate testified that Martini made the statement about closing the plant in the conversation about the annual wage increase as related above. She testified, "We asked him if he was going to close down the plant, and he said that he'd closed down his plant in Santa Rosa and he would do the same at Molino if we was to go Union." Martini denied saying anything to either Pate or Lindsay about closing down the plant if it went Union or saying that he would or had to close down in Santa Rosa. I am not satisfied that, in making

⁸ The reporter failed to hear the final letter and reported this word as "close," but, on cross-examination, Lindsay removed any doubt by quoting Martini as saying that he would close the apple plant "like he did close down his plant in Santa Rosa." Pate also used the words "he'd closed." The Trial Examiner heard the word as "closed" and, over objection of the Respondent, ordered the error in the transcript corrected.

his denial, Martini's memory was directed to the conversation that he actually had with the two girls. Before he was asked if he had made certain statements, he was first told by Respondent's counsel that Lindsay had testified that Martini made the statement in October, whereas in fact Lindsay had put it in September, and he was told by counsel that Lindsay had testified that he said "if the plant would go Union you would lose too much money and *you would close down in Santa Rosa.*" (italics supplied.) That was not quite the same as saying that he had closed the plant in Santa Rosa as both Lindsay and Pate quoted him as saying, and as the transcript of Lindsay's testimony on cross-examination shows. Although Martini's denial may (in his own mind) have been intended to go to the incident as such rather than to Lindsay's account thereof, this is not the form of his testimony, and he did not deny Pate's testimony of the statement. Martini had been connected with other plants than that of the Respondent—plants located in and about Santa Rosa, among them one plant in Santa Rosa which was "union" and which had closed down in 1951 or 1952. I believe that Martini did make the statement approximately as Lindsay and Pate testified. Although, as quoted by Lindsay, Martini said that he would lose too much money if the plant went union and that he would close down, his statement as made is not the equivalent of saying that if operation of the plant became unprofitable (after the Union became the representative of the employees) he would close it down. As made, his statement as-

sumes as a foregone conclusion that the plant could not profitably be operated if the Union became the employees' bargaining representative and therefore he was saying that he would close down as soon as the representative status of the Union was certified—not after attempting to operate at a profit following such certification. In effect, therefore, the statement about closing the plant was coercive and I find that by it the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Mary Russell, an employee of the Respondent in 1954, testified that in August or early September, near the benches outside the women's lounge in the plant, Ella Herrerias, the night floorlady, and concededly a supervisor, in the presence of a group of employees, said that if any of them talked union or signed pledge cards they would immediately lose their jobs; also, that if any of them attended union meetings there would be someone there from the company who would come back with their names, which would get to Martini, and that they would lose their jobs. Herrerias denied having made this statement and denied having spoken with Russell at all. There was nothing in Russell's testimony to indicate that Herrerias' statement was directed to her individually. In evaluating the denials of Herrerias, I have taken into account her demeanor on the witness stand, her evasiveness at critical points on cross-examination, conflicts in her own testimony, and her apparent disposition to mislead, as well as the testimony of numerous witnesses which amply

portrays Herrerias as committed to a course of opposition to the Union.⁹ Russell, on the other hand, impressed me as an honest witness. Although in some instances I have questioned the accuracy of her memory of exact words quoted by her as used by supervisors, I credit her testimony as to the substance of what Herrerias said, and I find that it constituted interference, restraint, and coercion by the Respondent in violation of Section 8(a)(1) of the Act.

Eva Lee, also an employee in 1954, quoted Herrerias as making similar statements at about the same period of time, at about 4 p.m., one day outside the woman's lounge near the time clock. According to Lee, Herrerias said, in the presence of a group of women who were talking about the Union, "Don't get my girls all excited about the Union because * * * if you do * * * you are going to get blackballed from every job around here." Lee also quoted Herrerias as telling employees that they would be laid off if they did not quit talking about the Union. A few days later, in the women's rest room at the time of change of shift, according to Lee, the women were talking about the Union,

⁹ Edna Hardin, day shift floorlady in 1954, testified that Herrerias told her in September 1954 that she (Herrerias) had just got rid of three agitators, which Hardin took to mean (correctly, I find) union agitators. Hardin was not employed by the Respondent at the time of the hearing. From Hardin's testimony and all the evidence, I judge Hardin to be not favorable toward the Union but inclined to be neutral.

and Herrerias said, "If you girls think I am tough now, wait; if the Union gets in, I'll show you how tough I can be."¹⁰ I find that Herrerias made such statements substantially as quoted by Lee and find that by such statements the Respondent interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act.

Eloyce Mounger, nee McPhee, testified that early in September 1954 (while she was employed at the Respondent's) she went to Martini, apparently on the plant grounds, and told him that she was going to be married in October but was returning to school and wanted to work part-time, after school hours. According to Mounger's testimony, Martini asked her if she was "getting a fair deal working," that she said, "yes," and that he then said, "You know that if the union gets in that you can't work part-time under the union, you could work only full-time" and "then he said that the unions had tried to get in a couple of years before but hadn't succeeded, and if he could keep them out—or keep them from getting in this year, they couldn't try again for five years, and he said that under the union the conditions in the cannery would be more strict." He then told her to see the floorlady about part-time work. Martini denied that there was such a conversation with Mounger. I believe and find that

¹⁰ Lee gave slightly different wording, in quoting Herrerias, on direct and cross-examination, without changing the substance of Herrerias' statement. The quotation above is taken from her testimony on cross-examination.

Mounger, then McPhee, did speak to Martini concerning part-time work as she testified. I also find that Martini made some reference to working conditions in a plant where a union was a bargaining representative, but I am not convinced that Mounger quoted him accurately. Her testimony sounds like a garbled version of what Martini may have said. Martini may have mentioned the effect of the one year rule, i.e. Section 9 (c) (3) of the Act, on the Union's efforts to win recognition, but I deem it improbable that Martini said that if the Union did not get in that year it could not try again for 5 years. I find that Mounger's accuracy is questionable in several respects. Because of the doubt raised concerning such parts of her testimony, I am deterred from finding that Martini made the specific statement about keeping the Union from getting in that year, although it appears more probable that he said that than that he said that the Union could not try again for 5 years.

In the latter part of September, Martini handed Lindsay and Pate a newspaper clipping concerning financial difficulties or irregularities of a local of the same international union as that with which the Union here was affiliated. He asked, "Now, what do you think of the Union?" Then asked them to show the clipping to the officials of the Union and let him know what they said about it. Later he returned to Lindsay to learn their response. I find no unfair labor practices in this incident.

Also in the month of September 1954, during a

morning break (rest period), a group of women employees, which included Russell, heretofore mentioned, and Lila Layman, were standing in the doorway of the plant. One of the women asked Martini, who was there, why "he wouldn't go union." Russell and Layman quoted Martini's answer to this question but they differed slightly as to his words. According to Layman's testimony Martini answered "that he would close the plant down rather than to see it go union, because he couldn't afford to pay union wages." Russell testified that Martini said "that he would shut the plant down definitely before going union, and he said 'I would not pay union wages.'" Martini testified that he did not recall such an incident as related by Russell and that he did not make such a statement as counsel indicated Russell had testified about. He was not asked about Layman's testimony concerning the incident. I find that such an incident did occur and that Martini made a statement substantially as quoted by Layman. But even the difference in meaning imparted by the use of "could" as quoted by Layman in the phrase "couldn't afford to pay union wages" instead of "would" as quoted by Russell ("wouldn't pay union wages") does not prevent the statement from carrying a threat. In fact, as in Martini's statement to Pate and Lindsay, it indicated an intention to close the plant without awaiting the results of negotiations on wages, in the event that the Union should be designated bargaining agent by a majority of the employees. I find, therefore, that by such threat the Respondent interfered with, restrained, and coerced its employees in the

exercise of the rights guaranteed in Section 7 of the Act.

At lunch time on Wednesday, September 22, 1954, while employees were sitting in their cars on the Respondent's parking lot, Grami and other union representatives were on the highway with a sound truck. Over the loud speaker, the latter urged the employees to get a committee of six or seven employees together and ask Martini if he would meet with union representatives with respect to the holding of an immediate election.¹¹ Orice Storey, Lila Layman, and Mary Russell, who were on the Union's organizing committee, stopped along the way and got some other women to go in with them to present the request to Martini. Learning that Martini was then in the office in the cannery (the main office being in a separate building), Layman went up the steps to the balcony where the office was located and knocked on the door. Superintendent Duckworth came and told Layman that Martini was busy. She went back downstairs and waited with the group of women. The time came for them to punch the time clock and return to their stations. Floorlady Hardin asked why they did not punch in, and they told her they were waiting to speak with Martini. Hardin went up and told Martini that Mrs. Storey wanted to speak with him. In a little while he came down to where the

¹¹ The petition for certification had been filed on August 17 and the representation hearing had been held on September 19. The decision of the Board was being awaited when the incident here described took place.

group of women, variously estimated by the witnesses as between 25 and 75, were standing. Storey and Layman asked Martini to meet with the union representative in regard to an immediate election. Martini said definitely that he would not, that since the matter was in the hands of the Board he had nothing to talk with them about, that the Board would soon render a decision. Thereupon the women returned to work. Storey's time card for that date shows that she punched the clock at 12:02 p.m. She was supposed to be at her post at 12.

At about 3:30 p.m. the same day, September 22, 1954, Superintendent Duckworth went to Layman and Storey as they were working and told them that Martini wanted to speak with them in the office. They went there and Martini said he knew Storey and was getting to know Layman, that he had watched Storey and knew her to be a good worker, that he was disappointed in her and did not think she would be taken in by "those union guys."¹² Martini asked Storey why she was doing it." Storey answered, "For money," and asked if he thought 95 cents an hour was adequate pay for what they were doing. There followed a lengthy talk in which Martini presented arguments against the Union and advised them to think the matter over carefully before they got involved in something that would not do themselves or anyone else any good. According to Martini, he told them that he admired the

¹² The findings here made are taken partly from the testimony of Orice Storey, partly from that of Layman, and partly from that of Martini.

way they fought for what they thought was right "but [asked] if they wouldn't do me a favor and cease from having conversations of that type in the building proper where it would disrupt my employees and affect the production of the plant." Storey quoted Martini as saying that he had talked to her husband that day and told him "that I will not have you talking up this union thing on cannery property."¹³ Layman testified that Martini told them they could talk union on their own time. I deduce from the testimony of the three that Martini did not object to their talking about the Union on the parking lot but that he was prohibiting such talk within the cannery building. Except for facts hereinafter related, it might be supposed that Martini was thinking of limiting his admonition to refraining from union talk while at work in the cannery or while persons to whom they might be speaking were at work, but in view of the circumstances surrounding the discharge of Orice Storey, herein-after related, I find that Martini spoke literally when he warned them not to talk union in the building proper even if they might be speaking to someone who was not working. However, there is no evidence that a rule had been promulgated for all employees that they should not engage in talk about the Union in the cannery even while they were working. Floorlady Hardin testified that she had changed the work station of one girl who com-

¹³ It is not unlikely that Storey understood this to be the word used, whereas Martini actually said "proper" rather than "property."

plained to her that certain women were always trying to get her to join the Union, but Hardin apparently did not punish those who had done the soliciting, although it was presumably done while they were working. Martini did not finish speaking to Storey and Layman on September 22 until about 4:20 p.m., 20 minutes after the end of their shift, and they were paid overtime therefore. As the women employees had rest periods during their working hours and as they would then have time of their own to speak with anyone else who was not working, a prohibition against talking about the Union in the cannery building, even if promulgated as a general rule, would have limited their right to carry on discussions that would in no way interfere with their work or that of others,^{13a} and as Martini applied such prohibition only to certain employees, I conclude that the prohibition constituted an unwarranted limitation on their freedom of speech, and constituted interference, restraint and coercion of the Respondent's employees in the exercise of the rights guaranteed to the employees in Section 7 of the Act.

According to Clarence Storey, he had been summoned to the cannery office by Manager Martini on the same day, just before the noon incident above related.¹⁴ In the office, Martini said to Storey, as

^{13a} Williamson-Dickie Manufacturing Company, 115 NLRB No. 62.

¹⁴ Storey testified that he was supposed to punch the time clock at 11:45 a.m., after his lunch time and that he was just about to do so when Superintendent Duckworth interrupted and took him to the office. He testified that he was pretty sure he

quoted by the latter, "I understand you're going for the Union." Storey said he was. Martini asked if he knew what he was getting into. Storey said that he wanted more pay and Martin told him he would not get as much money as he was then, that the women would get only 90 cents an hour,¹⁵ and that he (Storey) would be assessed for accidents that happened as far east as New York. Martini told Storey that he did not want him talking union on company time but that he could do as he pleased on his own time.

Ernestine Hack and Erma Bate, who had worked near each other in 1954, testified to incidents involv-

had not punched in until after he came down, at which time he saw his wife and the other women at the bottom of the stairs. His time card for that date bore the after-lunch punch-in time of 11:40 a.m. I do not deem this discrepancy of great importance, although it would have placed some of the blame for late starting that noon on Martini, if he had been closeted with Clarence Storey that day, because Storey was the one to start the machinery and the flow of apples in the flume before the women could do their work. Except for the time card evidence, the fact that Martini spoke to Clarence Storey in the cannery office, in Duckworth's presence, as testified by Storey, was not disputed. It is probable that Storey had finished punching in when Duckworth told him that Martini wanted to speak to him.

¹⁵ I do not construe this to be a threat unilaterally to reduce pay if the Union became the bargaining agent. It was based rather on Martini's understanding of union rates. Orice Storey quoted Martini as saying that the Union had just signed a contract at Watsonville, a town about 150 miles south of Santa Rosa, calling for 90 cents an hour pay.

ing Floorlady Herrerias, but their memories of the time when they occurred sometimes differed. Although both Hack and Bate had signed union authorization cards, there is no evidence that Herrerias knew this, at least not before Bate gave Herrerias a list of union members, as hereinafter related, and I deduce from all the evidence that Herrerias had cause for believing that Bate and Hack were not union minded. Between October 5 and 10, according to Bate's testimony, Herrerias said to Bate, within the hearing of Hack, "If this place goes Union, we are going to close it down, already six weeks of apples went to the co-op cannery [Sebastopol Co-operative Cannery] on account of the Union." Herrerias denied having made the quoted statement. Hack quoted Herrerias as saying that "we lost six weeks of apples to the co-op and if the place went union we'd close down." I believe that Bate inferred from what Herrerias said that the transfer of apples to the co-op was on account of the Union and that Herrerias did not say so in so many words, but otherwise I credit Bate's testimony and I find that Herrerias made a statement substantially as quoted by Hack and Bate and I find that thereby the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Bate testified that a few days before the layoff, which occurred on October 15, 1954, Herrerias told her in Hack's presence that she was making up a list and that those who would "stick" with her would be assured of a job, whereas otherwise they would

be blackballed "from here down south." Hack testified to a similar statement by Herrerias but fixed the time as about mid-September. According to Hack, who testified that Bate was present, Herrerias said that anyone that joined the Union would be blackballed all the way down the line and further said that there would be some weeding out done. I believe and find that the testimony of Bate and Hack referred to the same incident, that it occurred in October 1954, and that Herrerias made the statements, in substance, as testified by Bate and Hack. By such statements of Herrerias, the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The evidence indicates that many of the union advocates among the employees were known to the Respondent's supervisors before October 14, 1955. Evidence was adduced by the General Counsel tending to establish that Herrerias enlisted the assistance of certain employees in ascertaining the identity of those employees who favored the Union. Bate testified that, on about October 8, Herrerias came to where she was working as a sorter and asked her to go upon the slicer to see what she could find out about the Union. Bate shook her head. Herrerias denied that she asked Bate to work on the slicer to find out about the Union. Hack testified about this incident saying that about mid-September Herrerias asked Bate to go up on the slicer as relief and Bate went; that, about 2 weeks later Herrerias again asked Bate to go up on the slicer and Bate

shook her head, "No." Two explanations of the difference in testimony suggest themselves—either Hack did not hear as well as Bate or Bate inferred that Herrerias wanted her to go to the slicer for the purpose she testified to. I am inclined to the latter explanation, because if Hack were close enough to hear part of what Herrerias said, I would suppose that she could have heard everything that was said. I base no finding of unfair labor practice on this incident.

An instance of Herrerias' interest in the identity of pro-union employees was related by Pauline Ploxa. Ploxa had, before September 10, 1954, been employed by the Sebastopol Co-operative Cannery, hereinafter called the Co-op, before it laid off some of its employees about that date. On September 13, Ploxa and her friend, Dora Rawles, were employed by the Respondent. Because Herrerias either flatly contradicted Ploxa or gave a different version of the incidents to which Ploxa testified, I shall relate both versions of such incidents before resolving the conflict. Ploxa testified that about 2 or 3 weeks after she was hired (which would fix the time as between September 27 and October 4, she telephoned Herrerias and asked if there was going to be any trouble at the cannery "between the workers and the cannery or the Union." It is not clear why Ploxa thought there might be trouble at that particular time unless it was because of the discharge, on September 25, of Orice Storey, an outstanding union advocate.¹⁶ Ploxa testified that she

¹⁶ Storey's discharge will be related hereinafter.

asked Herrerias if it was safe for her and Rawles to come to work and spoke about "the picket line,"¹⁷ and that Herrerias replied, "Don't be afraid, Martini is going to get the sheriff from Santa Rosa and have everything under control," and then added, "It will be best for you girls to keep away from the Union meeting, because Mr. Martini is going to shut the place down if you go to those meetings." On Tuesday night, October 12, 1954, according to Ploxa, who speaks Spanish as well as English, Herrerias came to where she was working and spoke to Ploxa in Spanish, saying, "Pauline, will you go to the union meeting for me as a friend, and because we both speak Spanish, and tell me who from here will be there?" Ploxa testified that she asked Herrerias, "Why, what are you going to do if I tell you?" and that Herrerias answered, "I want to get their names at least, and give them to Mr. Martini so he can fire them." Ploxa testified that she told Herrerias that she did not know the names of all the women and that Herrerias said Ploxa should go and take notice of the ones who were at the meeting and then come back and point them out to Herrerias. Ploxa went to the union meeting on the afternoon of October 13. At the plant that night, she testified, Herrerias came to her and told her, in Spanish, to go to the bathroom. After first

Other events during the period of time set by Ploxa include: September 19, the Board hearing in the representation case; October 4, the Board's decision and direction of election.

¹⁷ There was no evidence that picket line had been established or was even contemplated.

protesting, according to Ploxa, she went there and Herrerias came and asked her who was at the union meeting. When Ploxa testified that she did not know the women, Herrerias opened the door and told Ploxa to point out the women that she saw. Ploxa pointed to Clara Davello as one who had been at the meeting. Herrerias said, "Oh, I don't worry about her, she hates the Union." Ploxa testified that a woman named Mary Chapita¹⁸ walked by and that she told Herrerias that that woman was at the meeting and that Herrerias replied that that was all she wanted to know. Ploxa testified that she then told Herrerias that a union man would be at the plant the next day to give out "the buttons" and that Herrerias patted Ploxa and said, "For that, you will have a job with the company."

Herrerias admitted that she sometimes spoke Spanish with Ploxa and admitted having had conversations with Ploxa but of somewhat different content. With respect to the telephone conversation to which Ploxa testified, Herrerias testified that Ploxa had called her to say that she and Rawles would not be at work and that when she thanked Ploxa and started to hang up, Ploxa said, "I have something I want to tell you," and that Ploxa then proceeded to tell Herrerias about Mary

¹⁸ This is the spelling of the official reporter. It sounded like "Chiquita" to me and also apparently to Respondent's counsel because he used that spelling and pronunciation later in questioning Herrerias. (Tr. p. 3409) If this is correct, Ploxa may have been using it as a nickname, as it is Spanish for "little girl."

Seidel, an employee of the Respondent who had come from the Co-op, saying that she was a trouble-maker. Herrerias testified that she told Ploxa that she did not know who Seidel was and that Ploxa then described her and told Herrerias that Seidel was "very strong union" and to be careful of her. Herrerias testified that she replied that she was not interested, that the woman was doing her work and that as long as she was doing her work it did not make any difference to her.¹⁹ She denied that she had told Ploxa that it was best to keep away from union meetings.²⁰ With respect to the other incident to which Ploxa testified, Herrerias testified that on October 12 while she was making her rounds, Ploxa was sitting at the slicing machine staring off into space, that she asked Ploxa "What is new?" or "What is on your mind?" and that Ploxa said there was a [union] meeting the next day and she did not know whether or not she should go. Herrerias testified that she asked Ploxa "Why not?" and that Ploxa then said, "Well, I don't know. On second thought I believe I will go. I

¹⁹Seidel was laid off when the night shift was terminated on October 15. Ploxa was scheduled to be retained but told Martini that she could not work days. Ploxa had signed a union pledge card on September 3 while she was still working at the Co-op. There is no evidence that Seidel had ever signed one. Also there is no evidence that Herrerias knew that Ploxa had signed one at the Co-op. If Herrerias made the reply, as testified by her, I find that it was intended to mislead and that Herrerias was not, in fact, disinterested.

²⁰I do not believe that Herrerias made this statement in manner and form as testified by Ploxa.

will see who is there and I will let you know." Herrerias testified that she told Ploxa she was not interested.²¹ The next day or so, according to Herrerias, she stopped to speak with Ploxa and asked, "What is new?" Ploxa replied in Spanish, "Don't say anything because I don't want Mrs. Rawles to understand." Herrerias testified that she told Ploxa, "I don't know what you are talking about," and that that was all, that she did not tell Ploxa to go to the ladies' room, that she never spoke to Ploxa off the platform, and that she did not know any Mary Chapita.²².

Before making resolutions of credibility, two fur-

²¹ In Herrerias' affidavit executed on February 9, 1954, appears the following: "Ploxa and I are both Spanish, from the same home town, and we spoke in Spanish together. I recall that one afternoon she was kind of quiet and I asked her, 'What's on your mind?' Ploxa said, 'There is a union meeting tomorrow and I don't know whether to go to it or not.' I asked her why didn't she go, and she said maybe she would. Ploxa said, 'I'll let you know who is there.' I said that if she wanted to tell me anything it would be all right."

²² Herrerias' affidavit reads: "So then, either the day of the meeting or the day after, I stopped where Ploxa was working and I asked, 'What's new?' I don't recall her answer, but it was not much. Then I said, 'Was there a big crowd?' or something like that. Ploxa switched to Spanish and said, 'I don't want the girl next to me (meaning Dora Rawles) to know what we are talking about.' But Ploxa didn't volunteer any information then, and I didn't ask for any. We did go off in a discussion, but not about anything in particular. I asked Ploxa who was at the meeting, but she didn't tell me and I didn't press her."

ther incidents mentioned by Ploxa will be related. Ploxa testified that on October 14 as she was coming to the plant for the night shift, Bill Grami, the Union's organizer, was handing out union buttons, that she got one but put it in her pocket and did not wear it, that, when she got to her station, Herrerias asked her and Rawles where their buttons were, and that they replied that they were in their pockets. She testified that Herrerias turned and went to the office, which was on a balcony, that Mrs. Herrerias stood on the balcony with a pad of paper and a pencil in her hand next to a laboratory employee, Mary McGuire, looking down at the women—"looking at them and writing." The suggested inference to be drawn from this testimony apparently is that Herrerias was writing down the names of employees who were wearing union buttons. Dora Rawles corroborated Ploxa's testimony that Herrerias questioned them about where their buttons were. Herrerias denied both the questioning and Ploxa's testimony of her making notes on the balcony.

A resolution of credibility as between Ploxa and Herrerias is not without difficulties because I have reason to believe that, although there was a factual foundation for Ploxa's testimony, Ploxa may have changed or embellished the facts in some of the incidents for personal reasons of her own. For example, on October 13, no employee named Mary Chripita or Chiquita was listed on the payroll.²³ Mary

²³ Ploxa's demeanor on the witness stand gave me the impression that she mentally groped for a name

Seidel was listed. If Ploxa did tell Herrerias that Seidel was "very strong union," the information appears to have been false so far as the evidence shows. No evidence was adduced by the General Counsel to identify Chapita or Chiquita as an employee or to prove that Seidel, if she was the same as Chapita or Chiquita, was ever interested in the Union. The evidence creates an impression that Ploxa was playing both ends against the middle—that she was trying to appear to the union side to be pro-union and as not giving away union secrets but at the same time trying to make Herrerias believe she was siding against the Union. Herrerias was not always frank in her testimony and much of her testimony I do not credit. But on the other hand, certain portions of her testimony appear to be sufficiently probable as to be credible, at least in essence, if not detail, especially since they are in some respects similar to the account given in Herrerias' affidavit. From my observation of the witnesses and my analysis of the testimony and of all the evidence, I conclude that part of the testimony of each witness was true and I make the following findings: Ploxa, early in October, sought to give Herrerias the impression that she was not union minded by intimating in the telephone conversation she had with Herrerias at about that time that she was afraid of violence, probably from union activ-

before she came up with "Chapita" or "Chiquita." I conclude that she either failed to remember the name of a real employee or fabricated the name to avoid using Seidel's name, and I am inclined to believe it was the latter.

ity (although she reversed it in her testimony), and by warning Herrerias about Seidel. If Herrerias ever expressed disinterest, I find that it was feigned. Thereafter, Ploxa gave Herrerias the opportunity to suggest that she attend the union meeting of October 13 to identify employees who were at that meeting. I also find that Herrerias did, on October 14, ask Ploxa whom she had seen at the meeting and that Ploxa identified Clara Davello among others. The evidence indicates that Herrerias was friendly toward Davello. Although Davello had signed a union pledge card, there is some reason to infer that she was thought by the Union not to be a strong adherent. I find that Herrerias did respond to Ploxa's identification of Davello as Ploxa testified, although I am not satisfied that the incident took place in the ladies' room, or, if it did, that Herrerias was the one to suggest that as a place from which to identify those who had been at the union meeting. But regardless of doubts regarding details, I am satisfied and find that Herrerias was not disinterested in the matter of union connections of employees; rather, she was quite receptive to information along that line. I find that her conversation with Ploxa on October 14 was not as limited as she would have it believed. I draw no inference with respect to the incident Ploxa testified about when Herrerias was on the balcony, even if it occurred.²⁴ An inference that Herrerias was writing

²⁴ If there was such an incident, I believe that Ploxa was mistaken about the identity of the woman who was with Herrerias on the balcony.

down names of employees who were wearing union buttons is not warranted by the evidence. Even if Herrerias had been writing names of employees at that time and place, she might have innocently required assistance with names of employees whom she knew only by appearance. The evidence discloses that only 25 of 92 women on the night-shift payroll had signed union pledge cards,²⁵ and apparently few on that shift wore union buttons on October 14. Herrerias admitted to having seen but two, both by women who were among those laid off on October 15, although she testified that the layoff list had already been made up before she saw those women wearing buttons. The sum of the evidence convinces me that Herrerias learned the identity of many of the union-minded employees, but I doubt that she received much assistance from seeing union buttons on night-shift employees.

Rawles confirmed Ploxa's testimony respecting Herrerias' question about their union buttons. I believe it possible, however, that Ploxa and Rawles may have misconstrued the meaning of Herrerias' query. On the night of October 13, Ploxa had told Herrerias that a man from the Union would be passing out buttons, intimating that Herrerias could thereby learn the identity of union members. When few union buttons appeared on the night shift on October 14, a question, "Where are your union buttons?" could be interpreted to mean, "Where are all the buttons you said I would see?"

²⁵ Of the 25, several had signed only at places of former employment.

Since Ploxa had given Herrerias reason to believe that she and Rawles were not pro-union, it is improbable that Herrerias would have been expecting them to be wearing buttons themselves. In view of the doubt in meaning, I do not find that Herrerias asked the question with reference to personal union buttons of Ploxa and Rawles.

Marie Tripp testified that at 7 p.m. on October 19, after the election, she encountered Martini at a place called Molino Corners, a filling station, and that Martini had asked her how she had voted in the election and if the election suited her. Martini denied that he had asked the first question but admitted asking the second one. No testimony was given as to how the conversation started and there is nothing in the testimony of either Martini or Tripp to fortify the testimony of one or the other. It appeared to me that each of the two witnesses was testifying about the incident according to what he believed to be the truth. For all that appears from Tripp's testimony, "How did you vote?" were Martini's first words to her, as Tripp understood them, without any greeting or preliminary statements. But if that were the case, it might easily be that Tripp misunderstood the first word and that Martini actually may have said, "Hi"! or "Hello" followed by "Did you vote?" There was no showing that Martini had knowledge that Tripp had in fact voted and it does not seem probable that, without knowing that she had, he would ask her how she had voted. Martini gave a fuller account of the conversation than did Tripp except that he did not testify

whether or not Tripp replied to his question of whether or not the election returns suited her. Tripp told Martini that she had been laid off and needed the work. He took her address and telephone number and turned it in to the office. He told Tripp, he testified, that undoubtedly someone would leave before the end of the season and she could get back on. Tripp quoted Martini as saying, "Give me your name and 'phone number and we'll give you a call in a few days to come back to work." She never got the call. Consistent with my previous finding, I find that whether or not Tripp be deemed an employee or merely an applicant for employment, by Martini's questions as to how the election returns suited her, a question in form designed to learn Tripp's attitude toward the Union, the Respondent interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

Lila Layman and Mary Russell, two of the employees who had been on the union committee and who had been laid off by the Respondent on October 15, returned to the Respondent's plant and spoke with Martini in the warehouse one morning sometime between October 26 and November 3, 1954. They told him they were looking for work and asked if he needed help. He told them that he did not need any help but that they should leave their names and if someone left they could replace them. Martini took their names and turned them in to the office. Both Russell and Layman testified that Martini said that those who had been laid off would be

called back if there was a vacancy. According to Russell, Martini said they would be recalled before putting on new help. According to Layman he said they would be recalled in order of seniority. Martini did not specifically deny this, but may be presumed to have denied it as he made a blanket denial and gave his own account of the conversation, which did not include that part. It is not logical that Martini would say that the employees laid off would be recalled either in order of seniority or before new employees and yet would still tell them to turn in their own names for employment; for if the Respondent were going to rehire laid-off employees in order of seniority or before new employees, it would not need to take Russell's or Layman's name, for theirs would come up with all the rest. I infer that, if Martini made reference to any order or sequence of re-employment, his remarks were confined to those who had specifically asked for work and left their names.

Both Russell and Layman quoted Martini as making comments, in the same conversation, about unions which Martini denied. Their testimony was, in substance, that Martini said that unions were no good in canneries but were all right in big industries like the automobile industry. Since such a statement would be a privileged statement of opinion, it is unnecessary to decide whether or not Martini said it. Both Layman and Russell quoted Martini as making a statement of reproof about their union connections. As put by Russell, Martini said that they both "should have thought it over

seriously before jumping into this union deal." Layman testified that Martini "told me that I should have thought it over before I got myself involved in something I would have been sorry for." I find that Martini made some such statement, indicating knowledge of their union advocacy and re-proof thereof. I am not persuaded, however, that Martini made the statement as a threat since it was not connected with any statement indicating that that was the reason for not re-employing them and the evidence does not establish that a vacancy actually existed at that moment.

D. Evidence of Respondent's identification of union advocates

As will be related hereinafter, the Respondent terminated its night shift and laid off a substantial number of employees from both day and night shifts on October 15. According to Respondent's supervisors, a meeting to select employees for the purpose of retention after October 15 was held on the afternoon of October 14. At this time, if the Respondent had been so disposed, it could have identified day shift union supporters from their union buttons, as a majority on that shift were wearing them that day.

Erma Bate, previously mentioned, testified that she attended the union meeting which was held at the union hall on October 13 and that after that meeting she took from a desk, behind which Grami had been sitting during the meeting, a typed list of names and addresses of employees of the Respond-

ent who had signed union pledge cards. (Grami testified that usually five such lists were made up at a time.) This list, Bate testified, she put in her purse and later put it in the glove compartment of her car; then she went home and left the union button she had received at the meeting before she went to work. On October 14, at about 8:30 p.m., according to Bate, Herrerias came to her and asked what was new and if she had heard anything. Bate testified that she told Herrerias that she had something for her, and that Herrerias said, "Good." Bate further testified that she went to her car and got the list of names (which for purposes of identification will hereafter be referred to as the purloined list), returned, and gave it to Herrerias, no one else being present. Herrerias replied, according to Bate, "Thanks very much. I can't tell you how much I appreciate this, and Mr. Martini."

Herrerias admitted that she had had possession of the purloined list and that she had turned it over to Superintendent Duckworth, but she testified that she did not receive it until October 16, the day after the layoff, when Bate, unsolicited and uninvited, brought it to her home. She further testified that she delivered it to Duckworth that Saturday night. It is undisputed that Duckworth retained the list until the following Tuesday, October 19, the day of the Board-conducted election, and that he then told Herrerias it was on the desk in his office and that she could take it back.

Bate testified that she was at Herrerias' house on October 16, but her account of how she hap-

pened to be there and of what happened after she got there differs from that of Herrerias. In order to understand Bate's explanation it is necessary to go back to the afternoon of Friday, October 15, when the layoff was announced in the warehouse shortly after 4 o'clock. According to Bate, she left the plant in a huff that evening after the warehouse meeting, not waiting to finish the night shift, because, when the retention list was read, she did not hear her name.²⁶ She testified that she went home and refused to answer telephone calls which came from the plant by way of her neighbors' telephones. According to Ernestine Hack, a friend of Bate, and a credible witness, Herrerias came to Hack after the layoff meeting and asked where Bate was. Hack told Herrerias that Bate was mad because her name was not on the list and that she "took off." Hack testified that Herrerias got the name and telephone number of Bate's neighbor and tried to reach Bate but was unsuccessful. Herrerias then gave Hack permission to use the office telephone to try to reach Bate, as Hack suggested that Bate might speak with her although refusing to speak to Herrerias because of pique. Hack telephoned a neighbor of Bate's but was given the message that Bate was not home yet. Hack quoted Herrerias as saying that she was worried about "this union deal." Hack commented that there was going to be a union meeting that night and Herrerias said, according to Hack, "Yes, that's one

²⁶ Ernestine Hack, a friend of Bate, testified that she, likewise, did not hear Bate's name read.

of . . . what I'm afraid of." After the end of the shift, according to Hack, Herrerias gave to Hack a slip of paper on which she had written her name and telephone number and asked Hack to have Bate telephone her. Hack testified that she gave Bate the message the next morning. Bate testified that she telephoned Herrerias on Saturday morning, October 16, as requested, and that Herrerias asked why Bate had not come to her when she thought her name was not on the list. Bate testified that Herrerias then asked her to come to her house. Bate testified that she did go there and that, when she arrived, Herrerias asked her why she had not come to the office. "I was so worried about you," Bate quoted Herrerias as saying, "your name was on the list. Did you know you could get me into an awful lot of trouble if you wanted to, because I confided in you an awful lot." Bate further testified that Herrerias said that Martini did not trust her (Bate) because Bate's husband was such a strong union man, but that she (Herrerias) would fix it up so that Bate could go back to work.

Herrerias did not refute Hack's testimony of an attempt by Herrerias to reach Bate by telephone the night before. She made no mention of it at all. Yet she testified that Bate came to her house unexpected about noon on Saturday, October 16, laid the purloined list on the kitchen table, refused a cup of coffee, which Herrerias offered, and left with practically no conversation,²⁷ and in any event

²⁷ The first time Herrerias was on the stand, called by the General Counsel, although she was not a

none about Bate's failure to work on the night of October 15, nothing about Herrerias' effort to reach Bate by telephone, and nothing about Bate's returning to work the following Monday or fixing things up so that she could come back to work. I am convinced that Herrerias' testimony was not, in its entirety, the truth or the whole truth about this incident.

friendly witness, she testified that when Bate walked in through the back door she was surprised to see Bate and asked her what she wanted and that Bate said "that here was the list that I had asked her for, and I said that I didn't know anything about the list and don't leave it here, and she said, 'I don't want it either,' that there was no further conversation other than that she had asked Bate if she would like a cup of coffee and that Bate had said "No, she had to leave," and that she did leave. Later, when called as a witness for the Respondent, Herrerias denied Bate's testimony of the conversation at her house on October 16 and testified: "We had no conversation of any description. She just came in, dropped the list. I asked her, 'Would you have a cup of coffee,' because I was in the kitchen. She said, 'No, I am in a hurry,' and that was all that was said." On cross-examination by the General Counsel, Herrerias this time gave the following version of the conversation after Bate entered the back door: "I said, 'Well, what are you doing around here?' And with that she took the paper and threw it on the kitchen table, and I said to her, 'What is that?' She said, 'That is the list of the girls.' I said, 'Well, why are you bringing it to me?' She said, 'There it is, you can have it.' I said, 'Why don't you take it?' She said, 'I don't want it. Do what you want with it.' I said to her, 'Well, will you have a cup of coffee?' She said, 'No, I am in a hurry because my son is waiting for me,' and that is all there was."

The fact that I find part of Herrerias' testimony to be incredible makes it difficult to believe her testimony that the list was delivered by Bate on October 16. On the other hand, other facts make it conceivable that the list was in fact delivered by Bate to Herrerias on that date. In the first place, certain aspects of Bate's testimony want explanation. According to her testimony, she took the union list after the union meeting on October 13 and put it in the pocket of her car. But she testified that that meeting started at 1:30 or 2:30 p.m. and that she returned home before going to work that evening. From this it appears that the meeting was in the afternoon and that Bate had the list in her car during the night shift that began at 4 p.m. on October 13. Yet her testimony was that she delivered the purloined list to Herrerias at about 8:30 p.m. on October 14. She gave no explanation of why she would give it to Herrerias on October 14 but not on October 13, especially if she took the list for the purpose of giving it to Herrerias. The fact that Bate's neighbor reported to Hack, in the telephone call on Friday night, October 15, that Bate was "not home yet" suggests that this may have been a fact rather than that the neighbor was telling a falsehood to accommodate Bate. If Bate was not home, it is not improbable that she, like many other laid-off employees, went to the union hall on the evening of October 15 to report the fact of their layoff to the Union, and she could have acquired the purloined list that evening. Bate testified that she did not remember if she attended any other

union meeting between October 13 and the date of the election. If she had been at the union hall on the evening of October 15, there are two possible explanations of why Bate would, even though laid off herself, have delivered the list to Herrerias on October 16—she could have been using it to induce the Respondent to re-employ her or, if Bate had been a stauncher union advocate than she seemed, she could have been putting the list in the Respondent's possession in the expectation that a revelation thereof, with testimony of an earlier delivery, would make it appear that the Respondent had used the list in making its selection of employees for the layoff. The former seems more probable, but I am not finding either explanation to be fact. I mention them merely to show that it would not be incredible to believe that Bate did in fact deliver the list to Herrerias on October 16. A further consideration is that, if Bate had delivered the purloined list to Herrerias before the day of the layoff and if this came to Duckworth's attention, as it must have if it had been used in selection of employees for retention or layoff at the meeting held for that purpose on October 14, it is doubtful that Bate's name would have been left off of the retention list. But the evidence convinces me that it was left off and that she was in fact rehired on Monday, October 18. True, Hack testified that, after the layoff meeting on October 15, Herrerias showed her Bate's name on "the list," but Hack was unable to say that it was the same list as the one which had been read at the layoff meeting, and she

had already testified that she had not heard Bate's name read at the meeting. Bate's testimony of her conversation with Herrerias on Saturday would explain why her name was not read for retention even if Herrerias had intended to retain Bate. There is evidence that Herrerias had, like other supervisors, made up a list of employees she wanted to retain and Bate's name may have been on it, but I find that it was not included in the final list prepared for reading at the layoff meeting on Friday evening, October 15. Bate's time card for the week ending October 16 carries a false, but unexplained, note that Bate went home ill on October 15. Certain other notations on the same card had been erased. One exhibit, prepared by the Respondent but introduced by the General Counsel (General Counsel's Exhibit 41e), is a list of night-shift employees as of October 15, 1954, showing which employees were to be transferred to the day shift, which ones worked on the night shift October 15, and which ones "walked off," that is, failed to complete the shift after having punched in. On this list, Bate is shown as having walked off and as not having been transferred to the day shift. And an exhibit introduced by the General Counsel, which had been delivered to him by the Respondent as a list of those whose names were read for retention at the layoff meeting, did not contain Bate's name.

Although it is difficult to credit testimony, in part, of a witness who had been discredited on other testimony, Herrerias' testimony of the date of receipt of the purloined list, not inconsistent with

her own affidavit (made at a time when Herrerias apparently desired to unburden herself with respect to this list) strikes me as not improbable. But even if Herrerias were not to be credited on the date of delivery of the purloined list, I am doubtful enough of the accuracy of the evidence of an earlier delivery to refrain from relying on such evidence as an element in deciding whether or not the Respondent made a discriminatory selection of employees for retention and layoff. The evidence with respect to the Respondent's receipt of the purloined list does establish, however, by either account, that the Respondent was interested in learning the identity of pro-union employees even after the layoff.

Numerous items of evidence disclose that the Respondent was aware of union interest among the employees, of the identity of many employees who were interested, and particularly of the identity of active union advocates among the employees. Manager Martini was accustomed to banter with some of the employees about their union connections. Instances of this and of his conversations about the Union have already been related. To show that the Respondent was aware of the identity of other union advocates, the following incidents are related:

During late August and the month of September, union representatives would appear on the highway near the plant at noon and at the time for change of shifts and address the employees over a loud speaker. Manager Martini would frequently make remarks to Clarence Storey, the day shift

apple dumper, at his place of work, such as, "Storey, you're slipping. Your boys aren't out there yet," and "Storey, I hear your boys out there. I hear them talking." On one occasion in September, both Storey and his wife, Orice, who was then working on the sorting belt near him, invited Floor-lady Hardin to come to a union meeting. Hardin declined. Mention has already been made of conversations about the Union which Martini had with Gloria Pate and Gloria Lindsay. One day, early in October, when Lindsay, whose regular job was on the peeler or on the trim line, was working in the can car (a railroad car containing new empty cans) as relief for one of the other girls, (Ruth Clark or Shirley Veach or another girl) Martini came and asked her what she was doing there. She said she was there as relief, and, according to Lindsay, Martini said, "Well, what are you trying to do, change them over to the Union?" When she denied this, Martini said in a manner which Lindsay described as "wise-cracks," "I bet you are campaigning for them . . . I ought to put you over with Mr. Storey, you two could have a ball." Martini denied making such statements but I am convinced that Martini denied making some statements merely because, at the time, they seemed unimportant and, by the time of the hearing, he had no recollection of them. As the statements were banter, I do not find any unfair labor practice.

On one occasion around the first of October when Marie Tripp was working in the can car with Ruth Clark and Shirley Veach, according to Tripp, Mar-

tini said "something about it would be nice if we could get Storey over to the can car because then he would be away from his job and Martini could fire him. Martini denied making this statement, too. I believe that Tripp did hear some statement made concerning Storey, but I received the impression that Tripp had not clearly heard Martini and may have taken the statement out of context or filled in what she did not hear with what she supposed he had said. She gave no circumstances to indicate how such a statement came to be made. So, as the evidence stands, it came out of the blue. It seems improbable to me that Martini in all seriousness would make such a statement to employees and certainly not unless he had good reason to believe that the employees to whom he was speaking were anti-union. Under the circumstances, I am not disposed to base a finding on this portion of Tripp's testimony.²⁸

Tripp testified that on October 14, the day the union buttons were handed out and were first worn in the plant she was working in the can car with Ruth Clark and Shirley Veach, that she, herself, was wearing her union button on the collar of her blouse. Clark and Veach were wearing union buttons on the seats of their blue jeans.²⁹ William McGuire, the Respondent's sales manager and re-

²⁸ Tripp later told Storey about this, and Storey, as a consequence, remained closer to his station than before.

²⁹ Veach had not signed a pledge card for the Union.

cording secretary for the board of directors, stopped at the can car and asked where the girls' buttons were and they showed him. Then one of the girls asked where his was and he raised the bottom of his shirt (which he wore outside his pants) and showed a union button on his pants near his hip pocket. I do not credit McGuire's denial.³⁰ However, I draw no inferences adverse to the Respondent from the above incident (which I interpret to be an attempt by McGuire to be facetitious) except to the extent that it has a bearing on McGuire's credibility.

Ernestine Albini was employed in the Respondent's office in 1954, as a relief switchboard operator and office clerical worker. She testified that, a couple of days before the layoff, McGuire was about to check a list of names with the payroll clerk, Lloyd Marsland, and that McGuire remarked that he would like to know who was for the Union so that they could make up another list. McGuire denied this. As I do not find McGuire's testimony reliable on critical matters, I do not credit his denial. Although I find indications of confusion

³⁰ McGuire denied wearing a union button, and claimed that in October 1954 he had for a couple of days worn only an "I like Ike" button which he had gotten from an employee named Arnold Grant. The latter testified credibly on rebuttal that he had worked at the Respondent's plant in 1952 and 1953, but not in 1954, that he had a number of election buttons in 1952, but that he did not give any to McGuire either then or when he was at the plant once or twice when he stopped there in 1954.

with regard to details of other matters in Albini's testimony,³¹ I believe it was honest confusion and that she did not deliberately fabricate the testimony above related. I therefore credit it.

Floorlady Hardin at one point testified that the only employees who had talked to her about the Union were Zelma Brines and Joanne Chames. She told them that she thought that the Union was not good for them in a seasonal industry. But when testifying that these were the only employees who had talked to her about the Union she apparently did not have in mind the invitation to attend a union meeting which had been extended to her by Clarence and Orice Storey. When asked, she acknowledged that they had invited her. Knowledge by the Respondent of union attitude of employees is also illustrated by Hardin's testimony that, when union talk first started, she learned that employees Fanny Garrison, Gloria Pate, and Gloria Lindsay were agitators for the Union. She reported this to Superintendent Duckworth, who told her to watch them.

³¹ It appeared to me that Albini was confused about the time when she typed an exhibit showing the names of employees retained after the layoff. She identified it as the very list which she had typed before the October 15 layoff. At that time she would not have put on it the heading, reading in the past tense, that it was a list of names of employees read by McGuire at the October 15 lay-off. This does not mean that Albini had not typed a list of such names to be read by McGuire, but I believe General Counsel's exhibit 36 was a copy made sometime after October 15 rather than the identical list.

E. The October Layoff

1. The Evidence

Following a meeting of the board of directors on October 12,³² at which the manager was directed to terminate the night shift which was to operate beginning Monday, October 18, and he consulted with Sales Manager McGuire to determine what previous orders of supplies could be cancelled. McGuire caused to be prepared a list of the names of the current day and night shift employees for use by Superintendent Duckworth. The latter instructed each of the supervisors to make up a list of employees he wished to retain. Floorlady Hardin of the day shift had been replaced during an absence on account of illness, but during the week of October 11 to 16 she was working in the cannery office. She did not participate in the selection of female employees on the day shift and there is no evidence that her successor was requested to do so.

³² The date is taken from the minutes. The regularly monthly meeting would normally have been held on October 13. The advancement of the date, witnesses for the Respondent testified, was to permit a man named Hallberg (who operates O. A. Hallberg Cannery at Graton, a little way north of Sebastopol, and who was president of the Apple Growers Council) to attend the meeting to learn if the Respondent was going to continue as a member of the Apple Growers Council; because Hallberg was, according to the Respondent's witnesses, leaving for the East the next morning, the meeting date was advanced. The minutes themselves give no impression of the need for advancement of the meeting date.

On Thursday afternoon, October 14,³³ Superintendent Duckworth met with night shift Floorlady Herrerias and night shift Foreman Williams in a small storeroom on the cannery balcony near the laboratory and cannery office. Laboratory technician Esther Doty was working there at the time, but she was permitted to remain. During the meeting, Warehouse Foreman John Aguire came in for about 5 minutes to leave his list of employees to be retained. Sales Manager McGuire and a foreman named Schuster were present for a short time also but did not participate in the actual selection of employees.

Pursuant to directions from Manager Martini, a notice was posted, and employees were also verbally notified, that a meeting would be held in the warehouse at the end of the day shift on Friday, October 15, and that employees of both shifts should attend. This was the first such meeting ever to be held. At the appointed time the employees assembled in the warehouse. Martini told them that be-

³³ McGuire testified that he gave Duckworth the list of day and night shift employees on the day after the directors' meeting and the list of employees to be retained, herein called the retention list, was returned to him the following morning, but he testified that his discussion with Martini about cancellation of orders was on Wednesday morning, October 13, that he gave Duckworth the list of employees that afternoon and received it back with alterations on Thursday morning. Other supervisors set the time of the meeting to select employees for the single shift on Thursday afternoon, October 14. I conclude that McGuire was mistaken that he received the list back on Thursday morning.

cause of shortage of space in the warehouse, one shift would be laid off and that, as much as possible, the people would be laid off in the order of seniority. Paul "Tony" Bondi, chairman of the board of directors of the Respondent, told employees that there was very little space left in the warehouse, that the Respondent was sorry that they had to lay off a shift, that there were not too many apples to come in from the growers and there were not too many left in cold storage, that as in the past 2 years the employees were invited to the dinner at the end of the season. McGuire told the employees that those who would not be working could turn their caps and aprons in and they would be paid for them. He then read a list of those who were to report for work on Monday, October 18.

The list of employees to be retained, as read at the layoff meeting of October 15, although prepared and supplied by the Respondent (and introduced in evidence as General Counsel's exhibit 36) was claimed by the Respondent at the hearing to be not an accurate copy. At the hearing, the Respondent introduced in evidence another list of names (as Respondent's exhibit 13) which it claimed was "the list" read at the layoff meeting. (This list contained, among others, Bate's name.) But this list does not jibe with the evidence as closely as does the list originally furnished to the Board (General Counsel's exhibit 36). For example, there was evidence that some of the women whose names were read for retention (according to their own testimony) were unable to work on

the day shift and so did not work after October 15, 1954. Their names were on General Counsel's exhibit 36 but were not on Respondent's exhibit 13. Among such names were those of Ploxa, Rawles, Joanne Chames, and Ensebia Carrera. Such testimony suggests that Respondent's exhibit 13 was a list of employees working after October 18 and made up at some date after October 15 rather than the original list read on the latter date. The Respondent's exhibit contained the name of Arthur Heflin, who testified that his name was not read at the layoff meeting and hence his name ought not to appear on such a list. He further testified that Superintendent Duckworth rehired him right after the union election on October 19. Heflin's name (contrary to its appearance on the Respondent's exhibit) was not on the list furnished to the Board and introduced as a General Counsel's exhibit 36; so Heflin's testimony supports the General Counsel's exhibit as the correct list. The name of Beulah Cassidy, shown on General Counsel's exhibit 36, was stricken in pencil from Respondent's exhibit 13. McGuire testified he had stricken the name because it had been copied into Respondent's exhibit 13 through error, yet the records of the Respondent show Cassidy as employed to the end of the season. Thelma Ziegenbein's name was on the General Counsel's exhibit but not on the Respondent's exhibit; yet she also is shown by the records to have been employed until the end of the season on December 11, 1954. The same is true of Cornelia Jones, Helen Smoker, and, with the exception of

the date of final employment, of Frances Connors, Elsie Dickerson, and Evelyn Cuttress. Edna Hardin (the day-shift floorlady until she became ill) testified that, after she returned from an absence because of illness, she worked in the cannery office from October 11, 1954, for 3 weeks. She testified that she attended the layoff meeting on October 15 but her name was not read for retention, that after the meeting she spoke with Superintendent Duckworth about it, and he told her she could return to work on Monday, October 18. Hardin's name was not on General Counsel's exhibit 36 but was on Respondent's exhibit 13. Although some of the evidence suggests that General Counsel's exhibit 36, prepared by the Respondent, may have varied from the original list read by McGuire at the lay-off meeting, I find that it is more accurate than Respondent's exhibit 13, and that it is substantially accurate; so I rely on it in making my concluding findings.

After the meeting on October 15, the majority of the night shift employees returned to work. However, between 20 and 30 of them, who had punched in before the meeting, but whose names (with one exception) had not been read by McGuire as retained, left and did not work on the night shift that night.³⁴ The disputed facts about

³⁴ The Respondent contended that these employees quit and were not therefore laid off. The General Counsel contends that there was confusion and misunderstanding about the question of whether or not they were to work that night and that, if they were not actually laid off, they were constructively laid off. This issue will be dealt with later herein.

the layoff will be related hereinafter in connection with conclusions to be drawn respecting the reason for the layoff. Employees who worked after the layoff apparently received an increase in pay, for although the rate for the day-shift women had previously been 95 cents an hour, personnel records show pay at the rate of \$1 an hour after that date.

2. Concluding Findings Regarding the Layoff

It is the General Counsel's contention that the layoff was accelerated by the Respondent so as to affect the result of the Tuesday, October 19, election but that, even if the layoff had been dictated by economic necessity in the ordinary conduct of the Respondent's business (which he contends is disproved), the selection of employees was discriminatory and that by means of such discriminatory selection the Respondent contrived to lay off a large enough number of union sympathizers to affect the result of the election.

(a) The Necessity for the Layoff

The Respondent gave as the reason for the layoff that its warehouses were almost full and that the supply of canning apples after October 15 would not be enough to warrant more than one shift. The production of canned goods with one shift operating, the Respondent explained, was not expected to exceed the capacity of the Respondent's warehouses because sales would remove canned goods from the warehouses at about the rate of production on one shift.

The General Counsel attacks the claim that the Respondent was short of space to house its production, even at the rate that could have been produced by two shifts after October 15, 1954. But he does not even concede that a shortage of apples after that date came about in the ordinary course of the Respondent's business, because, he asserts, the Respondent diverted a huge supply of its own apples to another cannery—the Co-op—to be canned for the Respondent, and the General Counsel contends that the Respondent was motivated in doing this, not by economic considerations, but by a purpose of putting itself in a position to lay off some of its own employees before the union election (a layoff earlier than normally would have been the case) so as to affect the result of that election.

The Respondent admits that the Co-op canned a large quantity of apple sauce for it from apples supplied by the Respondent, but it contends that this was necessary because a high percentage of apples received from growers in 1954 was unsaleable as fresh fruit, that this created such a large supply of cannery apples that production, even with two shifts, could not use the supply fast enough to keep the apples from overflowing the cold storage facilities, and that the apples were beginning to rot.

A vast amount of evidence was introduced, both in documentary form and through testimony of witnesses, in order to establish the respective claims of the parties. Much of the testimony is conflicting and cannot be accepted as reliable. But it may be

taken as uncontroverted that the 1954 Sonoma County apple crop was a large one, almost 12 per cent larger than in 1953, yet less than half as much of the crop of early apples was fit for sale as fresh fruit. The late apples were of better quality, the percentage of tons usable for sale as fresh fruit being up some 50 per cent over the 1953 crop, but the proportion used for canning was also greater, the proportion of late apples used for canning being up about 23 per cent over the 1953 crop. When apples are delivered to the Respondent by growers, they are classified either as cannery apples or as fresh fruit. Cannery apples are those which because of kind, size, or lack of quality are unfit for sale as fresh fruit. Cannery apples go direct into the cannery or go into cold storage (if there is room there) for future use in the cannery. Apples classified as fresh fruit go first to a packing shed, where the market grade apples are separated from the unmarketable apples. Those which are eliminated as not of market grade are called culls. Culls include not only those apples which are blemished or damaged but also perfectly good apples that are either too large or too small for market trade. The bloom on the apple, which helps to preserve it, is wiped off in the packing shed whether the apple is marketable as fresh fruit or is a cull. Also the culls receive a certain amount of bruising in the handling and boxing. The result is that culls will not keep as long as orchard run apples (cannery apples) which never go to the packing shed but go direct to the cannery or to cold storage for

future use in the cannery. Even in cold storage, the period during which an apple will keep will depend, in part at least, on its condition when it goes into cold storage. I deduce that culls normally do not last as long there as orchard run apples. In earlier years, according to Former Superintendent George Silva, he had kept Gravenstein apples in cold storage for as long as 3 months and late apples as long as 5 or 6 months. I assume that the maximum time was for orchard run apples. The maximum period that culls would last in cold storage he did not state. Although witnesses for the Respondent testified that culls would not hold up in cold storage, I do not accept such testimony as fixing the length of time which they would hold up. I infer that in years before 1954 culls had been kept in cold storage for a period of time the duration of which is not precisely fixed, but which would be long enough to permit their use in the cannery, a month or two at least.

During the 1954 season, the Respondent began to put apples in cold storage from the outset. Even fresh apples, as marketable apples are called, went into cold storage because the market early in the season was not favorable for quick disposition. This was also a condition that was frequently encountered in earlier years at the beginning of the season.

The peak of the harvest of Gravenstein apples (early apples which compose the greater part of the crop in Sonoma County in which Sebastopol is located) comes in mid-August, and at that time the Respondent fills its cold storage plant and ware-

houses and then puts the excess on or under its porches and even in the open. Each year during the peak of the Gravenstein season, the early apples come in faster than they can be used in the cannery, and, with storage rooms full, some of the apples are left in the open until they can be run off in the cannery. Some of the apples which are piled in boxes in the open, especially those in the top boxes, if not covered, will get sunburned, and the sunburned part of the apple will be cut off by the trimmers in the cannery along with blemishes, worm holes, etc. Silva, who had been the Respondent's superintendent between the spring of 1952 and the spring of 1954, testified that about one-sixth of a sunburned apple might have to be cut away. It takes about 2 weeks to use up the overflow of apples in the open after the peak of the harvest. This appears to have been true in 1954 also.

According to the Respondent's witnesses, the Respondent became concerned about the prospect of spoilage of apples late in August. One of these witnesses was Ezra Briggs, a director of the Respondent and also chairman of the board of directors of the Co-op. According to Briggs, he told Manager Martini on about August 27, 1954, that the culls were increasing and that they should either be canned or sent to a drier. He testified that Martini answered that he thought the crop was at the peak and that he could handle it. Briggs testified that on about September 5 to 10 he again raised the subject of disposing of the culls and that Martini agreed that the overflow was beginning to spoil

and said he would find some place to put them. Briggs told Martini, he testified, that the Co-op would can them for him or would take them to a drier and that Martini replied that he would hunt up a place right away. Briggs testified that at a special directors' meeting, the pile up and spoilage was mentioned but no action was taken on it—it was just left up to Martini and the cannery committee (which had authority only to make recommendations to Martini).

Evidence as to a decision by the Respondent to authorize Martini to send apples to the Co-op to be processed (which it was conceded he would need) was vague. Martini, himself, did not testify that he made the decision, but on Monday, September 13, shipments of apples from the Respondent to the Co-op for canning began.³⁵ It will be remembered that the Co-op had just laid off one shift as of Friday, September 10. Between September 13 and October 15, the Respondent delivered 1358 tons of apples to the Co-op for canning for the Respondent, allegedly for the sole purpose of avoiding spoilage of apples. Manager Martini and Rollo Winkler, vice-chairman of the board of directors, testified that in 1954 the spoilage amounted to 700

³⁵ About 74 or 75 tons of apples (according to one of the Respondent's exhibits) had been sent by the Respondent to the Co-op for canning in July 1954 because the Respondent had an order for 15,000 cases of apple sauce in a small sized (8 oz.) can which the Respondent was not equipped to seal. The General Counsel does not contend that this shipment was made for any reason other than the one given.

tons of apples as compared with 25 or 50 tons in 1953, and Martini testified that the spoiled apples were dumped in the fields or in a trench and covered up. Martini had not mentioned such spoilage or disposition in an affidavit he had made some time before the hearing. Where Martini and Winkler got the 700 ton figure does not appear. In Winkler's case, it sounded like hearsay. No records were offered to substantiate this testimony of the disposal of 700 tons of waste. I find it impossible to believe that such loss in fact was suffered. Records which were produced at the hearing accounted for the use of the entire tonnage of apples received by the Respondent in 1954. None of it was shown as waste.³⁶ Winkler testified that concentrate is made from peelings and cores. Apples too small to peel are sold for juice. The only part thrown away is that which rots. I infer that a certain amount of waste may remain after the making of concentrate. Perhaps this waste was included in the 700 ton figure.

Winkler's testimony did not appear too consistent to me, and his testimony tended to be given with-

³⁶ Total tonnage received.....	16,741.04
Packed as fresh fruit.....	4,648.48
*Sold to other processors....	1,121.51
Dryers	867.08
Co-op (for canning).....	1,432.80
H. H. Rider (juice apples)	205.92
Cannery	8,465.25
	<hr/>
	16,741.04
	16,741.04

*[I infer that these outlets were S & W, Blaufus, Macomber, Russell Taylor.]

out accurate basis in a number of instances. He testified that the apples began piling up outdoors in the latter part of August and that they were there long enough to begin to rot—3 or 4 weeks. I believe his estimate of time to be exaggerated, but assuming for the sake of argument that they were outdoors for 4 weeks, that would mean that they were there at the latest until late September. Deliveries to the Co-op started on September 13. Therefore, deliveries would have been made to the Co-op only until about September 28 instead of until October 15. Winkler testified that the "decision to turn the night shift loose was made after we had worked this surplus fruit out of the way and the remainder of our fruit was left in cold storage where we could handle it." But the decision to lay off one shift was made on October 12, and the evidence clearly shows that apples were taken to the Co-op from the cold storage plant before that date as well as after.

If the testimony of John Gregori, a member of the Respondent, is accurate as to date, he hauled about 500 tons of the Respondent's apples which had begun to spoil to dryers in the latter part of August. Because Gregori was only a member and not an officer or director of the Respondent, I make no finding with respect to the testimony of Marie Tripp that Gregori made a statement in the nature of an admission. Records in evidence show that a total of 848.9 tons of apples went from the Respondent' to dryers before October 15 and 18.18 after that date. The total amount sent to dryers

in 1954 is a smaller quantity than in either of the next two preceding years. Yet the evidence shows that it is fruit too poor to can which goes to the dryers. If so many bad apples were in the crop, the proportion sent to dryers would be expected to be greater. Although Respondent's witnesses testified that the dryers could not take more apples from the Respondent in 1954, I am not convinced that this testimony was true. It does not appear why the dryers would be able to take less tonnage from the Respondent in 1954 than in prior years.

Apples used in the cannery are started on their way by being dumped onto a conveyor by an employee called the dumper. The apples then cross rollers where employees called sorters pick off the rotten apples and any that would not peel. The remaining apples go over an eliminator belt where small apples, called juice apples, are removed. The rest of the apples then go into a flume into the cannery. Clarence Storey, the day-shift dumper during the 1953 and 1954 seasons (until the October 15 layoff) testified that he saw no more rotten apples in 1954 than in 1953. He also testified that he kept a record of rotten and spoiled apples removed at his station for the Respondent's records. If his testimony was not accurate, the Respondent needed only to produce the records, but it did not do so. I infer that all but a negligible quantity of the apples unfit for use in the cannery were used for juice, cider, concentrate or drying, and that such apples are accounted for in the Respondent's records accordingly.

I am not convinced that the need for getting the assistance of the Co-op beginning on September 13 was as pressing as was represented, if at all. According to Martini's testimony, the overflow of apples in the yard would have been worked off in 2 or 3 weeks from the peak of the Gravenstein period, which came around August 20 to 23; so, according to him, the overflow would have been gone by September 10. That would leave only the apples in cold storage to be disposed of. There are indications in the testimony of the Respondent's witnesses that they tended to shade their testimony and to exaggerate the need for disposal of the apples even from cold storage.³⁷ Briggs also testified that Gravenstein apples from cold storage as well as from the open yard went to the Co-op because they were spoiling—"a bruised apple in cold storage don't hold up." I cannot conceive of the removal of apples from cold storage by the Respondent for shipment to the Co-op for canning unless the situation was truly desperate or unless the Respondent had an ulterior motive in disposing of its apples in that way, for it would greatly increase the cost to the Respondent to have the Co-op process the apples for it. Not only would the Respondent have to pay a processing fee to the Co-op but it would have to pay to ship the apples

³⁷ Briggs put the peak of the Gravenstein season as on September 10, 3 weeks later than Martini did. It is difficult to understand why the Co-op would be laying off employees right at the peak of the season, if September 10 were the peak. I do not credit this testimony of Briggs.

to the Co-op and would have to pay to have the canned goods shipped back to it.³⁸

Gravenstein apples in cold storage in former years had held up for canning for as long as 3 months. The only plausible explanation offered for the inability to keep them in cold storage for as long a time in 1954 was that the culls were more bruised than in former years. This occurred, according to the Respondent's witness, Briggs, because of the large crop, and the fact that the culls had to be run through the packing shed faster and so got rougher handling.³⁹ Even granting, for the sake of argument, that this could have happened, I am not convinced that removal of apples from storage, not only on September 13, but for a solid month thereafter until October 15, was dictated by a desperate need. Although apples begin to go into cold storage at the beginning of the season, in the latter part of July, those apples would not be the

³⁸ Counsel for the General Counsel, in his brief, points to figures tending to show that it cost the Respondent more to have the apples processed by the Co-op than the average price for which the Respondent sold the product.

³⁹ Alfred W. Cook, supervising agricultural inspector for Sonoma County, who was at the Respondent's plant every day for several hours in the 1954 packing season, confirmed that there was a large cull-out because of sunburn or sunscald, but he testified that the machines in the packing shed were slowed down to give the workers time to remove culls. This would indicate that the culls would not be handled any more roughly because of haste, since the machines were paced to the workers' speed.

ones that would be expected to be still in cold storage on September 13, for the Respondent's cannery, with two shifts operating, could use from 60 to 100 tons a day, so the apples would be going out of cold storage at a steady rate for cannery use until the peak of the Gravenstein season brought apples in too fast; so the first apples in would not be the last ones out. It is doubtful that the cannery apples in cold storage in mid-September had been there longer than 5 or 6 weeks. If apples in the open would hold up until they were worked off in 2 or 3 weeks, as had been true in former years and as I infer from the testimony could have been done in 1954, I am convinced that the apples in cold storage were not in desperate condition on September 13 or thereafter. The Respondent, in presenting a picture of apples spoiling in cold storage made no effort to differentiate between culls and orchard run apples, although the latter were capable of being kept longer than culls because the bloom had not been removed from them.

The Respondent, according to its own evidence, decided on October 12 that its warehouses were filling up with canned goods and that, because of that and a prospective shortage of apples⁴⁰ it was

⁴⁰ Martini testified that he estimated the remaining quantity of apples to be received from growers after October 15 to be about 250 tons. So from October 18 to December 11, when the cannery closed for the season, the single shift would have been using those plus what was in cold storage. From figures in evidence, I would estimate that at least 550 tons of apples came from growers after October 15.

necessary to lay off one shift. But if such facts were known on October 12, why should the Respondent continue to send apples out of cold storage to the Co-op for canning on October 13, 14, and 15, thus, in effect, running three shifts for an additional 3 days instead of immediately discontinuing the Co-op shipments? In those 3 days the Respondent shipped about 136 tons of apples to the Co-op.⁴¹ It is difficult to believe that the apples shipped to the Co-op on those 3 days would not have lasted until used up in the Respondent's own cannery even if such apples had not been of the most lasting quality. The apples remaining in cold storage after October 15 would have had to remain in cold storage longer when only one shift was using them than if there had been two shifts using them, and that apparently was not cause for concern.

It is also difficult to believe that the rapid filling of the warehouses with canned goods resulting from the utilization of the Co-op's facilities as well as its own was something that just dawned on the Respondent on October 12. It was a condition that any management must reasonably be expected to have foreseen. Knowing that the warehouses would take no more canned goods if three shifts were used, counting the Co-op's processing as the equivalent of one shift (evidence is lacking of the rate of production by the Co-op), the Respondent might be expected to eliminate the costliest shift (the Co-op) first so as to permit sales and shipments to

⁴¹ This would produce approximately 6800 cases of apple sauce in No. 303 cans.

catch up to some extent with manufacture. But this was not done. The supply for the third shift (the Co-op) was continued until the very day of the layoff of the Respondent's night shift. No evidence was adduced to disclose when the apples delivered to the Co-op were canned and returned to the Respondent. When asked when the Co-op finished delivering the canned product to the Respondent, Martini was unable to answer with any degree of certainty. The bulk, he testified, came back upon packing, but when that may have been is not specifically shown. If it did not come back in 1954, Martini agreed, it came back early in 1955. By use of figures in evidence, I conclude that the Co-op canned and returned to the Respondent about 25,000 cases of apple sauce after October 15, 1954.⁴² If the

⁴² The Respondent had an inventory of 27,392 cases of No. 303 apple sauce on June 30, 1952. As the canning season did not begin until mid July 1954, the inventory apparently was part of the 1953 pack. By October 15, 1954, the Respondent itself produced 155,830 cases of No. 303 apple sauce. That made a total of 183,222 cases. Up to October 15, 1954, the Respondent had shipped out 55,983 cases of No. 303 apple sauce. If the Co-op had not packed any for the Respondent, the Respondent's inventory on October 15 would have been 183,222 less 55,983, or 127,239. But its inventory was actually 167,009 cases of No. 303 apple sauce on that date. Since the Co-op canned only No. 303 cans with apple sauce for the Respondent from the apples delivered to it after September 13, 1954, I conclude that the difference between 167,009 and 127,239 represented the number of cases processed by the Co-op for the Respondent before October 15, 1954. This difference is 39,970. As the Co-op produced a

apples delivered to the Co-op could not, in such a substantial amount, be packed until after October 15, I can see no rational or credible explanation for sending the apples to the Co-op for canning that was to be done after October 15 when the Respondent could have retained its own second shift and canned the sauce itself just as fast and cheaper. And, it may be asked, where were the apples which were waiting to be canned at the Co-op? Did the Co-op set them aside in cold storage, in warehouses, or in the open? The fact that the Respondent sent to the Co-op apples that could not be packed for some time after October 15 but laid off its own employees to reduce its own production after that date is a potent argument in support of the General Counsel's contention that the apples were sent to the Co-op so that the Respondent could effect a layoff before the date of the union election and thus affect the result of that election. And this conclusion would be warranted even without evidence adduced by the General Counsel of a verbal admission by the Respondent's superintendent. Frank Unciano, a non-union employee, testified credibly that outside the warehouse, about 3 weeks before the layoff of October 15, he asked Superintendent Duckworth why they were sending off the apples to the Co-op and that Duckworth replied that "he

total of 65,322 cases of No. 303 apple sauce for the Respondent from the apples delivered between September 13 and October 15, I conclude that the difference between 39,970 and 65,322 represents what was delivered by the Co-op to the Respondent after October 15, 1954. This amount is 25,552 cases.

was trying to finish all the apples as fast as they could, because they were afraid the Union was going to get in. . . ." He also testified that Duckworth said "he don't want to do business with the unions, he don't want to sign or whatever happens. . ." Although Duckworth denied that he had made such statements, I do not credit his denial, and I find that Duckworth made such statements as testified by Unciano.

I am not persuaded that the apples shipped to the Co-op from cold storage were only such apples as could not be used up in time to keep them from spoiling if they were used by two shifts in the Respondent's cannery. I have already shown that the Co-op did not can all such apples by October 15. According to the Respondent's figures, it had an inventory of 1,396.15 tons of cannery apples on October 15. With only one shift, those apples would have had to wait twice as long to be processed as they would have with two shifts. There is no evidence to show that only early apples were delivered to the Co-op or that no early apples remained in cold storage after October 15. And as previously stated no differentiation was made between culls and orchard run apples. Martini testified that the picking of Gravenstein apples began about mid-July and ended about August 20 to 25, but that the cannery continued to use Gravensteins through the month of September. I infer therefore that the Gravenstein apples were used up or transferred to the Co-op by the end of September. Late apples

began to come in during September, after the Gravenstein peak, and culls from late apples would have been coming from the packing sheds throughout that month. The amount of culls from apples other than Gravensteins was small in comparison with those from Gravensteins, according to records introduced in evidence by the Respondent. Yet if Director Ezra Briggs were to be credited, the culls, even at this date were of such poor quality that they could not be put in cold storage because their condition was too poor and therefore they had to be sent to the Co-op lest they become worthless. One wonders what disposition was made of the culls after October 15, if they were of such poor quality up to that date. Briggs' testimony would require the conclusion that, of the apples coming in up to October 15, the culls were too poor to be put in cold storage whereas the culls of those coming in after October 15 were of a quality to keep in cold storage long enough to be worked out on one shift. His testimony taxes credulity. I cannot believe that the improvement in quality came about so suddenly; and if it did not come about so suddenly, many of the apples sent to the Co-op, if they came direct from the packing sheds without going into cold storage, must have been late apples that could have been kept in cold storage for at least another month or two.

Although it is possible to believe that good business judgment could have dictated the delivery of some apples of an overly large crop to the Co-op

for processing to avoid spoilage, I cannot believe, in view of the cost involved, that good judgment dictated the delivery of such large quantities of apples (much of which was not in danger of spoiling) to the Co-op for processing unless the Respondent had an ulterior motive. Martini testified that there had been an overflow of apples into the yard during the peak of the Gravenstein season in each of the three seasons from 1952 and 1954. But only in 1954 were any apples processed for the Respondent at another cannery to avoid spoilage. Martini testified that it might have been wisest to send the overflow to another cannery in the other years, too, but that at such time the other canneries were in the same fix the Respondent was in. I infer that, when apples were sent to the Co-op beginning on September 13, 1954, the rush of Gravensteins was past and the overflow of apples in the yard (i.e. those stacked in the open) had been pretty well worked off in the Respondent's own cannery; for if the peak of the harvest had not well passed, the Co-op would still have been hard pressed to process its own apples and could not have accepted work for the Respondent. I am assuming that the Co-op did not run a third shift in order to process the Respondent's apples, for it would not make sense to deliver apples to the Co-op for processing by a third shift inasmuch as the Respondent could have run a third shift, itself, cheaper than paying the Co-op to process the apples if a third shift had been a feasible solution. I conclude on all the evidence that the Respondent's

witnesses exaggerated the seriousness of the situation.⁴³

From the foregoing it may be concluded that, if the Respondent was running short of warehouse space on October 12, when it decided to lay off its night shift, it needlessly brought the situation on itself by its diversion of apples to the Co-op in pursuance of an illegal object. However, close scrutiny of evidence refutes the Respondent's claim of a shortage of warehouse space on October 12 or 15, 1954. In 1953 the Respondent had a number of scattered packing sheds and warehouses in which it stored canned goods. The cannery building itself had a warehouse which Martini testified was classed as a 100,000 case warehouse. It had a capacity, however, of nearly 114,000 cases. This was the only actual warehouse the Respondent had before 1954, although the Respondent in prior years had made use of some of the packing sheds for warehouse purposes. The packing sheds were not insulated, however, and cans stood a chance of getting rusty in damp weather. In 1952 there was some such damage. This, Martini testified, was the reason for not using the packing sheds for warehouse purposes in 1954. That reason had not been given by him in his affidavit, where he mentioned only the high han-

⁴³ In 1954 the Respondent had about 870 tons more Gravenstein culls than in 1953. The Respondent, with two shifts, could run off that amount within about 2 weeks of canning. A total of 1432.8 tons of the Respondent's apples were processed by the Co-op for the Respondent in 1954, 1357 tons after September 13.

dling costs and the weakened condition of the floor of one shed. In 1953, in addition to the cannery warehouse, the Respondent used a partially enclosed porch attached to its cold storage building (where 70,000 cases were stored), a porch on the cannery building (which took about 6,000 cases), and it installed a heater in one cold storage room so that after that room was empty of apples it could be dried in a couple of days and used for warehouse purposes. This cold storage room had a capacity of close to 140,000 cases. Thus, without use of packing sheds or uninsulated warehouses (other than the porches), the Respondent, in 1953, had room for around 330,000 cases of canned goods. According to the Respondent's inventory, it had 252,166 cases on hand on October 15, 1954. Thus with no more than its 1953 capacity and without use of the packing sheds, it still had space for about 78,000 cases, and taking into account that at that time of the year the Respondent's shipments were about 4,000 cases a day and that each shift produced between 1700 and 3000 cases a day, according to Martini's testimony, the Respondent in all probability had sufficient warehouse capacity for the production by two shifts after October 15, 1954. But even if it would not have had enough room with only its 1953 warehouse capacity, it had adequate space in 1954, because early in the 1954 season, the Respondent finished and used a new, insulated warehouse with a capacity of 180,000 cases. If this were added to its 1953 warehousing capacity, the total 1954 capacity would have been 510,000 cases without use of pack-

ing sheds. Its total production, including all that was processed by others for it, in the 1954 season, was 494,657 cases. Therefore, if the Respondent made no shipments, there would have been sufficient warehouse capacity for its full production; but before October 15, 1954, it had shipped a total of about 145,124 cases and, by December 11, 1954, when the cannery closed, a total of 217,660 cases had been shipped.⁴⁴ It would appear, therefore, that the Respondent would not have had need for space for its full year's production and therefore there would have been an overabundance of space all through the 1954 season.

With respect to the one cold storage room (there being two such rooms, of equal size) in which a heater had been installed in 1953 and which was used for warehouse purposes in that year, Martini testified that it was not used in 1954 because there were apples in there and because it would take about 10 days to 2 weeks to dry it out after it had been emptied. Former Superintendent Silva, who supervised the installation of the heater in 1953, testified that, without the heater, the cold storage room would have to be aired out for a week before using it as a warehouse, but that, with the heater, it could be dried out in not more than a couple of days. I conclude that inability to dry the cold storage room out soon enough to avoid laying off one shift was not a contributing cause for the lay-

⁴⁴ The net reduction of inventory would be smaller by 39,595 cases, on hand on June 30 from the prior season.

off. No evidence was offered to show that more or less than one cold storage room was actually needed for fresh or cannery apples after October 15. Martini did testify that there were apples in both rooms from July 1954 to January 1955, but he also testified that in 1954 one cold storage room was "finally" used for warehousing canned goods. The two statements are not quite consistent. Furthermore, Martini did not say that apples in the two cold storage rooms could not have been consolidated in one. I infer from other facts in evidence that they could have been, if storage space for canned goods had been needed.. There was testimony that most of the fresh fruit had been shipped by mid-September.⁴⁵ So presumably the fresh fruit in cold storage after that date was in small amounts. The evidence also shows that, after delivery of 1350 tons of apples to the Co-op between September 13 and October 15, the Respondent had an inventory remaining of 1396.15 tons of cannery apples in cold storage. The proportion of apples sent to the Co-op from cold storage is not shown, but on the basis of a justifiable conclusion that the overflow of apples in the yard was eliminated by mid-September,⁴⁶

⁴⁵ Briggs testified that on September 10 one cold storage room was filled with culls and one with fresh apples to be shipped, but he also testified that most of the fresh fruit had been shipped out of cold storage by mid-September.

⁴⁶ In addition to evidence of this previously stated, there is testimony by Bondi, chairman of the board of directors, that in mid-September Martini told him they had just begun to run apples from cold storage.

most of the apples sent to the Co-op must have come from one of the Respondent's two cold storage rooms. If one room had not been completely emptied by October 15, it must have been so nearly empty that it could have been readied by the time that the remaining space in the warehouses and porches was filled.

I find the testimony of available storage space on October 15 as given by the Respondent's witnesses to be misleading. Warehouse Foreman John Aguire testified that on October 15 both warehouses were filled and that any room after that was made by what was removed for shipping but he did not say that that other space was available elsewhere than in the two warehouses. Toni Bondi, chairman of the board of directors, testified that on October 12 there was still room for an estimated 15,000 to 20,000 cases in the new warehouse. Manager Martini testified that both warehouses were filled early in October and that afterwards they filled in from wherever cases were removed for shipping. Martini did testify that "some" of the canned goods were moved to the cold storage porch, which they began to use early in October, but he did not testify that it was used to capacity. This porch had a potential capacity of 50,000 to 70,000 cases, depending on whether Martini's or Silva's estimate is taken, but little mention of it was made by the Respondent's witnesses. By the testimony of those of the Respondents' own supervisory staff who testified, the warehouses had a capacity of 280,000 cases. I find this to be a conservative estimate. Even with-

out the use of the porches, this would have more than held the 252,166 cases which are shown by the Respondent as on hand on October 15 in its inventory. It does not appear, therefore, that, in any event, the cold storage room was the only remaining available space on October 15, as the figures would indicate that there was easily room for 28,000 cases in the warehouses before resort would have needed to be made of either the porches or the cold storage room.⁴⁷ In 1952 and 1953 with a smaller tonnage of apples, the Respondent did not terminate its night shift until November 6 and November 20, respectively. In view of the preponderance of the evidence, I find that lack of warehouse space on or after October 15 was not a reason for the reduction in production rate. This being the case, the question is one only of the sufficiency of apples for a second shift. Even without the apples which had been sent to the Co-op, enough apples remained so that there would have been no pressing necessity

⁴⁷ Dora Rawles testified that on October 15, after the warehouse meeting at which employees were notified of the layoff, she, Pauline Ploxa, and Ida Fishelson went to Martini to tell him their names were on the list to work but that they could not work days because they had children. Rawles quoted Fishelson as saying, in this conversation, that she had a warehouse in Santa Rosa that the Respondent could rent, and Rawles quoted Martini as replying that "there's more to it than that." Martini did not remember and so denied that any employee had offered a warehouse. But even if Martini had made the quoted statement, I do not view it as necessarily an admission against interest and I base no conclusion thereon.

for laying off the second shift before the election. The fact that the Respondent, under such circumstances, hastened to make the layoff before the election, warrants the conclusion, especially in the light of all the evidence, that the Respondent desired to lay off a substantial number of its employees before the election for the express purpose of affecting the result thereof. By such conduct, I find that the Respondent discriminated in regard to the hire and tenure of those of its employees whom it laid off on October 15, 1954, in violation of Section 8 (a) (3) and (1) of the Act.

(b) Selection of employees for layoff.

In 1951 the Respondent had only one shift. In each of the years 1952 and 1953, when the Respondent terminated the night shift, it laid off the staff of that shift, keeping only such night-shift employees as could be used on the day shift, without laying off any of the day-shift crew. Although Manager Martini testified that some employees of each shift were retained on the single shift in earlier years, I find that his testimony was misleading.⁴⁸ Former Superintendent Silva testified that in 1952 and 1953 only the night crew was laid off when the night shift was terminated and that none from the day shift was affected. Floorlady Herrerias testified that of the night-shift crew in 1953 only she and Mary McGuire, who was a laboratory employee

⁴⁸ Although Martini had just become manager in 1954, he had been a member of the Respondent since 1940 and would have had some knowledge of operations in earlier years.

and the mother of Sales Manager McGuire, were transferred to the day shift. Carmelita Montafi, who had been day-shift floorlady in 1953, testified that Herrerias gave her a list of the women from the night shift that she wanted to retain and, if there was any room for them on the day shift, she would put them on. When the termination of the night shift was directed in October 1954, however, the Respondent laid off employees from each shift. The supervisors (not including the day-shift floorlady) were directed to make up a list of the employees they wished to retain from both shifts.

If credit could be given to the testimony of the supervisors who made their selections of workers, the selection was on the basis of ability and, where that was equal, on seniority. However, I find that such testimony was not the whole truth. In some instances, perhaps, ability and length of service during that season were considered. But the evidence indicated a definite tendency to make an employee's attitude toward the Union a criterion, and in the case of active pro-unionism, the principal criterion in selecting employees for layoff. In the first place, Superintendent Duckworth, Night-shift Foreman Williams, and Night-shift Floorlady Herrerias were the supervisors who made final determination of the employees to be retained. Each of these three had evidenced strong antipathy for the Union. Warehouse Foreman Aguire and Head Mechanic Steve Struempf (whom I find to be a supervisor) each turned in to Duckworth a list of names of employees they wanted to retain, but they

did not remain in the conference long and did not make final determination. Although the Union was not well represented among the male employees, most of whom worked under Aguirre or Struempf, the majority of male union advocates were among those laid off, too. Edna Hardin, who had been the day-shift floorlady for most of the 1954 season up to October was, at the time of the meeting to select employees for the layoff, working in the office of the cannery on the balcony quite close to the storeroom where the meeting of supervisors was held. But not only was Hardin not invited to attend the meeting, she was not even consulted about the ability of the respective day-shift employees. As the day shift had only a temporary floorlady on Thursday and Friday, October 14 and 15,⁴⁹ Hardin was the one best qualified to determine the merits of the respective day-shift workers. Although she was not in favor of the Union, Hardin appeared disposed to be neutral.

Evidence that the selection of employees for lay-off was made on the basis of known or suspected union sympathy appears not only from the devia-

⁴⁹ Hardin's successor as floorlady, when Hardin was ill, remained only a short time. On Thursday, October 14, Eva Lee, a pro-union employee, was asked by Head Mechanic Steve Struempf to be temporary floorlady on the day shift. Lee was among those laid off on October 15, 2 days after being appointed floorlady, although she had been hired on July 20, near the beginning of the season. I draw no inference that the Respondent favored a union employee by making her a floorlady for 2 days before terminating her employment.

tion from past practice but also from the disproportionate number of union sympathizers, as compared to non-union employees laid off, from the selection for layoff of almost all of the employees who were on the union committee, and from the fact, that, where the evidence reveals knowledge by the Respondent before October 15 that an employee was outspokenly pro-union, such employee was, almost without exception, laid off. Herrerias denied the correctness of an affidavit which she had made in February 1955, in which she deposed that Duckworth had informed her on Monday (October 11, 1954) that the plant was going to one shift on Friday (October 15), that she would then be the day-shift floorlady, and that she should make up a list of which workers she wanted. In her affidavit, which she sought to discredit at the hearing, she quoted Duckworth as saying: "‘Pick out your best workers and get as many as possible who are non-union’—or words to that effect. He may have said to get rid of the pro-union people, or the ‘troublemakers’ * * *” In her testimony, Herrerias said that Duckworth “only said to me to pick out my best workers and anybody that was given me trouble.” Asked by Respondent’s counsel if any employees had given her trouble, Herrerias answered “a few,” but the only one she named as giving her trouble was Pauline Ploxa, who had had a fight with another girl and had to be separated from her. But Ploxa, as previously related herein, had given Herrerias reason to believe that she was not pro-union and it is significant that although she was the

only one whom Herrerias could name as a trouble-maker; other than in the sense of union advocate, Ploxa's name was on the list for retention after the layoff as read at the meeting of October 15, 1954. Even if Duckworth used the expression "trouble-makers" or those "who had given trouble," as she testified, instead of "pro-union employees" in instructing Herrerias whom to eliminate, I conclude that Herrerias correctly understood Duckworth to mean "outspoken union sympathizers," and I find that Herrerias made up her list accordingly to eliminate such employees.

If the Respondent had possession of the purloined list of union applicants before the supervisors met in the storeroom on the cannery balcony on October 14 to make up the list of employees to be retained, it would have been able to identify most of the union applicants. Some who had signed cards for the Union were not on the list, however, perhaps because they had either signed their pledge cards too recently or had signed at another plant and had not yet been transferred by the Union to the list of Respondent's employees. But even by the testimony of Erma Bate, who gave the list to Herrerias, she gave it to Herrerias on the night of October 14 after the retention list had apparently been made up by the Respondent. Of course, the list of those to be retained might have been altered before Friday afternoon, if the Respondent had received it before then and if it had desired to eliminate all known union advocates on the basis of the information given on the purloined list. But,

as previously stated, I do not rely on evidence that the purloined list was delivered to Herrerias on October 14 in drawing my conclusions. However, even if the Respondent had a list of union applicants, I would not expect that it would eliminate all of them. Such a course would not have been essential, wise, or even desirable from the Respondent's point of view. If the Respondent's purpose was to cause the Union to lose the election, it was not essential to lay off all union advocates—it was sufficient to lay off only enough to assure a majority vote against the Union; it would not have been wise to lay off all union employees because the lay-off would have been too obviously an anti-union move; and it would not have been desirable because some of those laid off would be numbered among the Respondent's best workers. Actually, 20 of the women and 2 of the men (of those still employed on October 14) whose names were on the purloined list were designated for retention, according to General Counsel's exhibit No. 36.⁵⁰ In all, 84 women employees, still employed on October 14, were named on the purloined list. The Respondent

⁵⁰ Two of these 20 women did not work continuously up to October 15 and did not return thereafter. One of the 20 women (Pate) was told her name was not supposed to be on the list and her employment was terminated on October 18, the day before the election. Most of the 20 had been hired early in the season, 14 of them in July 1954. This is not taken to mean that the Respondent was following strict seniority because 33 other employees who were hired just as early in the season were laid off.

therefore retained less than one-fourth of these. Only 5 men were named on the purloined list and 2 of these were retained. One of the 2 (Jose Garcia) had been employed since March 1954, before the season commenced. The other (Ray Panelli) had been employed on July 13, 1953, the season before and was the only truck driver shown on the employment list.

There were 27 women and 2 men named as on the Union's organizing committee. Of these, 4 women were listed for retention. Neither of the male committeemen was retained. One of the four women shown by General Counsel's exhibit 36 as expected to be retained was Gloria Pate, who was told on October 18 that she was not supposed to be on the list, and she was dismissed. Erma Bate, one of the women named as on the committee, but who delivered the purloined list to Herrerias, was not on the retention list but was re-employed on October 18.

Of the 17 women and 8 men who had signed union authorization cards (while employed by the Respondent) but whose names were not on the purloined union list, only 2 women (Elizabeth Augustine and Josephine Geist) and one man (Wayne Smith) were listed for retention. Five of the 17 women whose names were not on the purloined list had been hired in October.⁵¹ Three of the 15

⁵¹ The majority of the employees hired after October 2, the date of eligibility to vote in the union election, were laid off, although some of them were later re-employed.

women in this group who were laid off were, however, re-employed, one on October 18 (Edyth Wasin), one on October 20 (Oma Bridges) and one on October 28 (Julia Row). One of the 7 men in this group who had not been listed for retention, was nevertheless in the Respondent's employ on and after October 18 (Willy Augstin), and another man in this group was rehired on October 20 (Arthur Heflin). The latter had first been employed on October 4. Leonard Lee was one of the 7 in this group who was laid off. Both he and his wife were on the union committee. He had been employed on July 23, 1954, and he was not re-employed.

(1) Employees ineligible to vote.

As of October 14, 1954, there were 186 non-supervisory women and 67 non-supervisory men listed as on the payroll.⁵² In determining the effect of the layoff on the October 19 election, the employees hired after the date of eligibility to vote may be eliminated from consideration. Since 18 women and 3 men were hired after October 2 (the eligibility date), that many could not have voted anyway. But the statistics on even these are interest-

⁵² Although certain exhibits show a male employee named Fay Neel with a hiring date of June 7, 1954, the evidence shows that he did not work for the Respondent after July 31 until he was hired on October 16 as a watchman. Another employee, Henry Narron, was not on the retention list but he was given a job as watchman as of the night of October 15. Neel was not shown on the October 2 eligibility list. Narron was. I count Narron but not Neel among the 67.

ing, for of the 18 ineligible women, 12 were not listed for retention, but 6 were. Some of the 6 did not in fact work after October 15, probably, as in the case of Patricia Zimpher, because they could not work days. Of the 12 who were laid off, 7 had signed union cards, 5 had not. One of the latter 5 laid off had the same surname as a union applicant whose name was on the purloined list and who was laid off. Of the 6 women who had been hired after the eligibility date but who were listed for retention, 5 had not signed union cards while one had. None of the 3 ineligible men was on the retention list. But of the eligibles who were laid off on October 15, 2 women and 2 men were again employed by the Respondent before October 25. Neither of the 2 women re-employed had signed a union card. Only one of the 2 men re-employed had signed a union card (Arthur Heflin), but his name was not on the purloined union list. The name of only one of the entire ineligible group appeared on the purloined union list (Lois Thornton). She was laid off and was not re-employed.

(2) Employees eligible to vote.

The number of employees eligible to vote on October 19 who were in the Respondent's employ as of October 14 was 168 women and 64 men. Of these, 97⁵³ women and 11 men had signed union cards. Of the eligible-voter group, 72 women and 37 men were listed for retention. Considering, first, the

⁵³ A few of these had signed their cards while elsewhere employed.

proportion of these who had signed union application cards, the evidence shows that of the 72 women listed for retention, 22 had signed union cards while in the Respondent's employ, 3 had signed earlier at other canneries, and 1 for whom no card was introduced in evidence was listed on the purloined union list and so is presumed to have signed a card. This makes a total of 26 women who had at some time evidenced approval of the Union who were to be retained. As against the 26 out of a total of 97 union-minded women (or approximately 28 per cent), 45 out of 72 non-union women (or about 72 percent) were listed for retention. There is evidence, however, that the Respondent's supervisors had reason to believe that some of those here counted among the union-minded women were actually non-union minded, and that some of those laid off who were in fact non-union were or may have been thought to be union minded. For example, Herrerias had been told by Ploxa that Mary Seidel was strong for the Union. Seidel did not sign a union pledge card, but she was among those not listed for retention. According to the witness, Ploxa, Herrerias believed that Clara Davello (who had signed a union pledge card) was anti-union. Davello was listed by the Respondent for retention. Herrerias had been given reason to believe that Ploxa and Rawles were non-union. Perhaps they were. But since they had signed pledge cards while working at the Co-op before their employment by the Respondent, I have classed them here as union minded. They were both listed by the Respondent

for retention. By Herrerias' own testimony, she believed Louise Chapson to be non-union minded until she saw her name on the purloined union list on Saturday, October 16. Chapson was listed by the Respondent for retention. On the basis of the Respondent's belief, therefore, the difference between the foregoing percentages would be increased.

Another instance of the influence of the Respondent's belief of the attitude of employees toward the Union on the continuance of their employment is illustrated by the following facts: Of those whose names were not listed for retention, several were nevertheless in the Respondent's employ at the time of the election on October 19 and must be presumed to have been rehired. The Respondent did not officially keep records of employee status or case histories. If an employee did not work for several days, for whatever reason, the Respondent might make a penciled notation, "Quit," but it did not state or attempt to state on its records the reason for or fact of termination otherwise. Even the notation "quit" was of a mere presumption which was disregarded if the employee returned. The personnel payroll records, therefore, did not show who had been laid off. There were 13 women and 5 men not on the retention list, not shown as rehired, but nevertheless shown by the Respondent as in its employ on October 19. Of the 13 women, 7 had not signed union pledge cards and 6 had. Of the 5 men, 1 had signed a union pledge card and 4 had not. Thus, 11 non-union and 6 union employees were, in effect reinstated or continued in employ-

although not on the retention list. But, again, if the Respondent's basis for belief were taken into account, this difference would increase. The Respondent contended that it did not have the purloined union list in its possession until October 16, but even this date was before any of such reinstatements was made, and if the Respondent had relied on this list as evidence of identity of pro-union employees, only 1 of the 5 men and 4 of the 13 women so reinstated or retained would appear to have been pro-union. The names of the other 13 so reinstated did not appear on the purloined list. But one of the 4 women whose names were on the purloined list who was reinstated was Erma Bate, who had, herself, delivered the purloined list to Herrierias.⁵⁴

The General Counsel contends that the Respondent not only had the purloined union list on October 14, when it made up its retention list, but used it in its selection of employees so as to lay off a majority of union employees. If the purloined list had been so used, some of those on the purloined list were still retained as the following results indicate:

The total number of employees named on the purloined union list: Women 84, Men 5.

On Respondent's retention list of above number: Women 19,⁵⁵ Men 2.

⁵⁴ The other 3 were Ruth Clark, Pastoria Hall, and Etta Urton.

⁵⁵ This includes Gloria Pate, who was laid off on October 18, the day before the election.

However, I am not fully satisfied that the retention list, General Counsel's exhibit 36, was in fact, made up with the assistance of the purloined union list. I believe that the fact that the Respondent succeeded in laying off a much greater percentage of union than non-union employees may be attributable, to a large degree, to the fact that it made its selection of female employees to be retained mostly from the night shift. An exhaustive study of the evidence convinces me that the Respondent abandoned its past practice of laying off all the night-shift employees when terminating that shift in 1954 so that it could make a selection of a greater percentage of non-union employees for retention. This would have been feasible from the Respondent's point of view, first, because the greater percentage of the union employees was on the day shift and they could be identified by their union buttons and, second, because Herrerias, through her methods of surveillance, was in a good position to know who was and who was not for the Union on the night shift. The following figures⁵⁶ reveal the effect of the Respondent's selection:

⁵⁶ See Appendix A hereto attached for names and other data employed here.

Number and Approximate Percentage of Employees Affected On Payroll October 14				On Retention List October 15		
Total				Total		
Number	Prounion	Nonunion		Number	Prounion	Nonunion
W						
O Day	86	73	13	25	17	8
M						
E Night	82	23	59	46	9	37
N						
M Day	37	8	29	26	3	23
E						
N Night	27	3	24	11	0	11
T						
O	232	107	125	108	29	79
T						
A						
L						

From the foregoing it will be seen that the proportion of all non-union employees on the retention list in each case exceeds the proportion of all the union employees retained. The total result is a substantial proportionate increase in non-union employees. It is seen that almost twice as many women were selected for retention from the night shift as from the day shift, but the opposite is true of the men, for more than twice as many men were taken from the day shift as from the night shift. Such a pattern appears deliberately designed to affect the result of the union election.

The only two men on the union organizing committee were Clarence Storey, the day-shift dumper, and Leonard Lee, a day-shift stacker. No stackers were listed on the retention list. Salvador Chicano, the night-shift dumper, was retained. Although not listed for retention, Joe Bertoni, a night-shift stacker, apparently continued to work. Both Chi-

cano and Bertoni were non-union. Another stacker laid off was Arthur Heflin, hired too late to be eligible to vote in the union election on October 19. But immediately after the election Heflin was rehired. On the basis of seniority Storey had a few days more than Chicano. Lee had 2 months more than either Bertoni or Heflin. Although Heflin had signed a union pledge card about a week before the layoff, his name was not on the purloined union list and there is no evidence to indicate that the Respondent knew he was pro-union. Yet during the week after the layoff, between October 20 and 23, the Respondent hired six women, none of whom had previously been employed by the Respondent, and in the week after that, October 25 to 30, it hired four more women and one man none of whom had been employed before. Another new woman was hired on November 6.

Twenty-two of the employees whose names were not read on the retention list (excluding two watchmen) were either treated by the Respondent as retained or were rehired at some date between October 18 and 30. A twenty-third was out because of an accident and returned on November 8. Among the 22 were several students who worked only on weekends and two employees who had been out because of illness. Of the 22, 9 had signed union pledge cards before the layoff while 13 had not, but only 3 of the 9 were on the purloined union list and there is no evidence that the Respondent had reason to believe that the 6 who had signed pledge cards but whose names were not on the purloined union list (which Superintendent Duckworth admittedly

had possession of before any of these were rehired) were pro-union.

The method used by the Respondent in making its selection of employees for retention and the result effected of retaining a greater proportion of non-union employees, in the background of the anti-union attitude of the Respondent, evidences a clearly designed, discriminatory selection of employees for retention.⁵⁷

Although the Respondent claimed that the selection of employees was made by picking the best workers, its evidence of what kinds of things were taken into account were not shown except in a few cases where criticism of one or two of those laid off was made or where a few retained were described as good workers.⁵⁸ But even in such instances, it appeared to me that the strongest criticism had its source in anti-union bias. This was especially noticeable in the case of Clarence Storey, who was a fast worker and appears to have been deemed a good worker until he became active in the Union's organizational drive. The only material criticism made by the Respondent before Martini warned

⁵⁷ *Montgomery Ward & Co. v. N. L. R. B.*, 107 F. 2d 555 (C. A. 7); *Wright & McGill Co.*, 102 NLRB 1035; *Carolina Mills, Inc.*, 92 NLRB 1141, enf'd 190 F. 2d 675 (C. A. 4); *W. C. Nabors Company*, 89 NLRB 538, enf'd 196 F. 2d 272 (C. A. 5); *Granite State Machine Company*, 80 NLRB 79, 99; *Differential Steel Car Company*, 75 NLRB 714, enf'd 179 F. 2d 241 (C. A. 6); *Sandy Hill Iron & Brass Works*, 69 NLRB 355, enf'd 165 F. 2d 660 (C. A. 2).

⁵⁸ See *E. H. Moore, Inc.*, 40 NLRB 1058, 1075, 1077.

him against talking about the Union on employer's time was that he sometimes dumped so fast that he got more than enough apples in the flume, with the result that the water in the flume would run over onto the feet of the women on the peeler line, and, according to Respondent's evidence, he was on a few occasions asked to slow down. He was never criticized for dumping too slowly. Sometimes, after filling the flume, Storey would take a moment's break and go for a drink. Duckworth testified that several times during the season he had warned Storey against leaving his post. Storey denied this and I credit his denial. Criticism of his leaving his post, I am convinced, was not made until the Respondent had reason to believe that Storey was active on behalf of the Union. After that, as I view the evidence, the Respondent appeared to be suspicious of him every time he was away from his post, even if he went only to tell the forklift operator to bring him more apples. If Storey was warned about leaving his post for any reason, it was not until September 25 when his wife was discharged. Absent anti-union bias, it seems improbable that Storey would have been laid off. No comparison of working abilities of Storey, the day-shift dumper, and Chicano, the night-shift dumper, was offered. Whether or not Chicano was related to Virginia Chicano, whose name will be mentioned hereinafter, is not certain.

Most of the women's jobs were interchangeable, no special skill being required. Perhaps speed and thoroughness could differentiate some women from others, but there was no evidence to identify em-

ployees by such criteria, and as Hardin, who had been the day-shift floorlady, was not asked for an opinion of the women on the day shift, the inference is that such criteria were not used.

I conclude and find, on all the evidence, that, regardless of whether or not a layoff on October 15 might have been justified on economic grounds, the Respondent's selection of employees to be laid off or retained was discriminatory.

I also find evidence of discrimination in rehiring after the layoff. Although Martini told several of the women who had been laid off and were seeking re-employment that they should leave their names, addresses and telephone numbers and that, if a vacancy arose, they would be called, they were not rehired. Yet between October 20 and November 6, 1954, the Respondent hired twelve new women and one new man. Martini had personally taken the name of Marie Tripp on October 19, right after the election, but she was not recalled. Mary Russell and Lila Layman applied for work between October 26 and November 3 and Martini took their names, too, but they were not recalled, although one or two vacancies must have arisen thereafter for two new women were hired, one October 27 and one on November 6. All the new female employees were hired as trimmers, jobs for which those laid off were qualified. Further data on hiring and rehiring will be set forth hereafter in connection with the discharge of Gloria Pate.

F. The new application form

In the course of the hearing, the General Counsel,

upon motion granted, amended his complaint by adding as an allegation of the violation of Section 8 (a) (1) of the Act, the adoption by the Respondent, before the commencement of the 1955 season, of a new form of application blank for use by applicants for employment. Before 1955, the Respondent had used a very short form of application blank, asking for name, address, name of spouse, social security number, sex, date of birth, name and address and telephone number of person to notify in case of accident, that person's relationship, a line for signature, a couple of lines for "Reason for leaving" and "Recommendation." This was all contained on a half page of approximately 5½ x 8½ inches. The new form covered both sides of a full-sized sheet measuring about 8½ x 10½ inches. The new questionnaire calls for detailed information about the applicant and his educational and employment history. From the nature of the detailed information sought, as well as the fact that it asks for the expected salary and the applicant's salary in past positions, I conclude that the form was originally designed for use by applicants for permanent salaried positions rather than for seasonal, wage-paying, manual jobs. Among the questions is:

25. To [sic] what Trade, Professional or other organizations are you a member: (Do not name any organization which would reveal your race, religion, color, or ancestral origin.)

At the conclusion of the form, the applicant is required to agree to abide by all present and subsequently issued rules of the company, to authorize

past employers to furnish all information "they may have concerning" the applicant, to authorize an investigation of all statements in the application, and to "understand" that, in the event of his employment, he will be subject to dismissal if any of the information given is false or if he has failed to give any material information requested. Martini testified that he adopted the new form after he had remarked in May 1955 at an apple industry meeting that he was about out of employment application forms and was considering having a new form printed which would be "a little more complete," and after a later meeting, when W. M. Caldwell, of the California Association of Employers, informed him of a form that was used "generally throughout the industry."

When such a form is used for the purpose for which it appears to be designed, i.e. by applicants for salaried positions, question 25 of the application form could be relevant and would not be likely to be thought to call for union affiliations. But applicants for hourly paid manual work would not be likely to belong to the same type of trade or professional organizations as salaried workers. To the type of worker employed by the Respondent, the question could easily be interpreted as asking for union affiliation, especially since union affiliation is not specifically excluded in the parenthetical statement under the question. The Respondent did not explain why it would wish to know about the trade or professional organizations to which a future apple dumper or peeler, for example, belonged.

There is no evidence that the Respondent took special steps to see that this question was either answered or left unanswered, but in view of the penalty of discharge suggested (at the close of the form) for failing to give material information requested, it must be assumed that the Respondent expected the question to be answered. Perhaps, standing by itself, the use of such a questionnaire by an employer who had no anti-union background would not suffice to establish interference, restraint, or coercion. Indeed, it has been held that use of such a form, standing by itself, is not a basis for a finding of an unfair labor practice.⁵⁹ But although the use of a questionnaire containing a question about union membership may not be *per se* interference, restraint, and coercion prohibited by provisions of Section 8 (a) (1) of the Act, such practice may take on a coercive character in a background of hostility to a union. As stated by the Court in *N. L. R. B. v. Syracuse Color Press Inc.*⁶⁰

The type of interrogation here finds no specific authorization in the provisions of Section 8 (c) of the Act. It is afforded constitutional protection only to the point that it is free from the character of coercion * * * When that limit is passed, jurisdictional precedents are unanimous that a violation of Section 8 (a) (1) may be found.

Here, the time, the place, the personnel involved,

⁵⁹ *N. L. R. B. v. Ozark Dam Construction*, 190 F. 2d 222, 227 (C. A. 8).

⁶⁰ 209 F. 2d 596 (C. A. 2), cert. den. 347 U. S. 966.

the information sought, and the employer's conceded preference, all must be considered in determining whether or not the actual or likely effect of the interrogations upon the employees constitutes interference, restraint or coercion.

The mere fact that the question which may call for an answer concerning union membership does not include the words "union membership" or the equivalent does not absolve the employer from coercive influence of the question if an employee might reasonably be expected to disclose his union membership in answer to the question.⁶¹ Evidence in the record indicates that the application form put to use in 1955 by the Respondent was used by a number of other employers as well. Such evidence does not, however, justify its use by the Respondent on the facts here present. For all that appears, the other employers may use it for the purpose for which it was obviously intended—applicants for salaried positions, where, standing by itself, it would not be so likely to be interpreted to call for revelation of union membership, especially in the absence of a background of hostility toward a union. But in the background here, which is not only hostile to the Union but contains concrete proof that the Respondent was disposed to discriminate against union advocates, the constraint imposed (upon both applicants for employment and employees alike who have good cause to believe that

⁶¹ Centennial Cotton Gin Company, 90 NLRB 345, aff'd, 193 F. 2d 502 (C. A. 5).

the Respondent has such hostility and discriminating disposition) by a question concerning organizational membership is apparent. In a case such as this, it suffices that the question has such effect or tendency, without a finding that the Respondent specifically intended to produce such effect. But considering the failure of the Respondent to re-employ such employees as Pate, Tripp, Russell, and Layman, among others, who it knew were pro-union, before giving employment to new employees as it did, the evidence of the Respondent's disposition and effort to avoid a union majority, the generally hostile attitude of the Respondent toward the Union, and the lack of any other reasonable explanation for adopting an application form which was not apparently needed and certainly was not designed for the type of employees for which it was put to use, I believe that an inference is warranted that the Respondent here used such form for coercive purposes, with the expectation that applicants would reveal their union membership. I find, therefore, that by the use of such application form, the Respondent interfered with, restrained, and coerced its employees and applicants for employment in the exercise of the rights guaranteed in Section 7 of the Act.

G. Discriminatory Discharges

1. Orice Storey

First employed in September 1953, Orice Storey worked until the end of that season. Just before the end of the season, the floorlady told Storey, along

with the other women that she would like to have her back the next season. About July 1, 1954, the Respondent sent post cards notices to its 1953 employees asking them if they intended to return and if so to report on July 9 to receive assignments. Storey received such a card and reported on that day, filling out certain forms. She started working on July 16. Her floorlady, Edna Hardin, who was not in the employ of the Respondent at the time of the hearing, testified that early in the season Storey was sorting apples but because she was a fast trimmer she was brought inside and put on the trim line.

On August 4, as previously related, Superintendent Duckworth and Foreman Williams spoke to Storey and her husband as they were driving out of the parking lot and handed them blank application cards for the Union with the suggestion that they throw the cards at the union organizer. Instead of following the suggestion, Storey and her husband signed the cards and mailed them to the Union.

Storey and her husband were put on the day-shift organizing committee by a union representative, and Storey thereafter passed out pledge cards in and about the cannery to other employees during the lunch time and before and after work. The organizing committee held meetings and reported to the union representative the number of cards passed out and the progress of organization.

On one occasion early in the season, as previously related, Storey invited Floorlady Hardin to a union meeting. Hardin refused, Storey quoted her as say-

ing that she would like to but that if she did there would be too much "yak, yak."

On about September 23 the incident occurred which was previously related. At a suggestion from a union representative speaking over an amplifier from a truck on the highway, Storey got some other women together and went to the cannery to ask Martini, who was then in the cannery office,⁶² to agree to an immediate election, instead of waiting for a Board ordered one.⁶³ The incident which followed, and which has already been related, delayed the commencement of work a few minutes after the regular noon hour. Storey testified that when the 12 o'clock whistle blew, there was a rush to the time clock and some of the women had started back to their work positions before Martini came down. She testified that she, herself, was on her way to her position and turned back to speak with Martini when he came down from the cannery office. Her time card was punched at 12:02 p.m. that day.

Later that afternoon Martini summoned Storey and another woman to the office and spoke with them for about 50 minutes. In this conversation Martini warned them not to talk union within the cannery proper, but he did not limit the prohibition

⁶² This was the office used principally by Duckworth, although it was available to other supervisors. The Respondent's main office was at one end of the cold-storage building porch.

⁶³ The representation hearing had been held on September 19. The Board order that an election be held was issued on October 4, but the date was not fixed until later.

to working time and he promulgated no general rule.

On Saturday, September 25, 1954, the day shift worked from 7 a.m. until noon. Storey had a cold on Friday, September 24, and Saturday, September 25, but she worked most of the time, occasionally asking Floorlady Hardin for aspirin. On Friday afternoon, Hardin sent Storey to the women's lounge.⁶⁴ On Saturday Storey asked Hardin for aspirin at about 11 a.m. Later, according to Hardin, Storey said that the aspirin did not help and that she would like to check out and go to her car. Hardin consented. Storey punched out at 11:24 a.m. and, according to her testimony, when she got to the car, it was so hot [from the sun] that she rolled the windows down, opened a door and walked back to the cannery to wait for the car to cool off. She stood inside the cannery door near the time clock. She testified that she did not go to the women's lounge because the night shift women were arriving and, when she looked in, she saw that the lounge was full of night-shift women.

Although there was supposed to be a rule that employees were not to congregate inside the cannery when waiting for the change of shifts, the rule appears not to have been enforced except early in the

⁶⁴ Storey testified that this was at about 3 p.m. and that she was there until work stopped because of a breakdown. But her time card shows that she punched out that afternoon at 1:44 o'clock. Her husband punched out at 1:42 p.m. I deduce that if she went to the lounge, it was before she punched out.

season, for there is ample evidence that a number of night-shift women usually waited near the time clock until time to start the night shift. While standing near the time clock, Storey conversed with a few of the women sitting on one of the benches near the door to the women's lounge. Storey testified that they called her over to ask her the time and place of the union meeting the next week. Storey told them and invited them to come. Another woman said she had heard that Storey was on the union committee and asked how she could get on it. Storey told her to call Angelo Bertolucci. The woman then told Storey that Martini, who was on the balcony, was looking at them.

A number of witnesses testified concerning what occurred following the foregoing, which was based on Storey's testimony, as she was the sole witness as to what occurred near the time clock up to that point. As there is some conflict as to what occurred next, I have pieced the story together from the testimony of several witnesses, using such portions as appeared to be based on reliable memory. Storey testified that, at this point, a night-shift employee by the name of Virginia Chicano sat down near where Storey was standing, asked how the Union was going and engaged Storey in a brief conversation.⁶⁵ At about this time, Martini sent Superin-

⁶⁵ Chicano testified that Storey solicited her to join the Union, but I find that Chicano confused the above conversation with one she had with Storey after the latter's discharge. In 1955 Chicano was made an assistant floorlady.

tendent Duckworth down to learn what Storey was doing where she was. Duckworth went down and reported back that Storey had checked out ill. Martini told Duckworth to see if Storey had punched out. Duckworth got the attention of Floorlady Hardin and motioned her over. Hardin came to the stairs leading to the balcony that runs outside of the cannery office and laboratory. Duckworth met her on the stairs and asked her if Storey had checked out. Hardin said she would check Storey's time card. She went to the rack and looked at the card and told Duckworth, who had followed her, that Storey had punched out. Duckworth went back and reported this to Martini who told Duckworth to ask Storey to leave. Chicano went upstairs and told Duckworth that Storey had asked her to join the Union.⁶⁶ Duckworth went down again and told Storey to wait outside. Storey asked why and if she was in the way. Duckworth said she definitely was in the way and again asked her to go outside. Storey said it was pretty hot outside. Duckworth went back to the balcony and told Martini that Storey would not leave. Martini told him to go down and see that she left and never came back.⁶⁷

⁶⁶ A comparison of the testimony of Duckworth and Chicano on this incident indicates some elaboration by Duckworth. Storey testified convincingly on rebuttal that she had not asked Chicano to join the Union until after her discharge although she admitted that on the occasion above related she had talked to Chicano about the Union.

⁶⁷ This last finding is based on Martini's testimony. Duckworth testified that Martini told him to discharge Storey.

Duckworth again returned and told Storey more emphatically to leave.⁶⁸ She left by the back door and waited in the car for her husband to finish his shift. As Storey's husband worked just outside the back door, on the south side of the building, I infer that she passed that way to let him know what had happened.

Shortly after Storey left, Martini and Duckworth went out the same door by which Storey had left, and Martini called her husband, Clarence, out to a point about 25 feet from his post and asked if he knew what his wife was doing. Martini and Clarence Storey gave different versions of the ensuing conversation. Each will be given before making findings of fact. According to the account of Clarence Storey, when he replied that he did not know, Martini said she was trying to form a committee on the night shift and that he wanted Clarence to go fire his wife, "get her out of here." Clarence replied that that was Martini's job, that if he wanted to fire her that was for him to do. Duckworth came then and said that he had two witnesses that she was trying to form a committee on the night shift. Just then Chairman Bondi came and said that if Duckworth had two witnesses that was enough, that he would sign her check. Clarence told Martini that his wife had punched out and was on her own time and that "you told us two days ago that we could do what we

⁶⁸ Duckworth testified that he discharged her, but he did not say what words he used. He apparently did not give Storey the impression at that time that he had discharged her.

wanted on our own time." He quoted Martini as saying, "I forbid talking union on cannery property, on cannery property," and also as saying "Why don't they get their committees and get it over with . . . You know I am the boss, I am the manager, I run this cannery. Why in the don't you get Bertolucci and Rhodes to shut the place down."

According to Martini's account, he told Clarence Storey that he had just discharged his wife and that the next time he had a complaint from any one of "my people" that Clarence Storey had left his post, he would fire him also, "and I walked away." Martini and Duckworth denied that the conversation was as quoted by Clarence Storey, but Duckworth testified that Martini did use strong language. Martini, Duckworth and Bondi all denied that Bondi was present. Bondi testified that Duckworth came to him just outside the office and asked him to sign the check for Orice Storey because Martini had left. He did so.

I infer, that, although Duckworth told Clarence Storey at about 11:55 a.m. that he would have his wife's pay ready for her in a short while, the Storeys did not wait for it that day but got the check on Monday. Clarence Storey told his wife that he "guessed they fired" her. Later, Orice Storey called Floorlady Hardin to ask if she had been discharged. Hardin replied that she did not know, but that Duckworth had removed Storey's card from the rack.

With respect to the conflict in the evidence, I conclude that the conversation between Clarence Storey and Martini was one accompanied by considerable emotion and that the speed with which words flew and actions occurred would make it difficult to remember the order in which words were spoken or movements occurred as well as difficult to remember the exact words spoken, but I find that, in substance, Martini did speak substantially as quoted by Clarence Storey although Martini no doubt added a warning to Clarence Storey as he testified. Bondi was in the environs at the time of the incident but I am inclined to believe that Bondi did not make the statement about two witnesses being enough. On the other hand, I do not believe Storey's testimony of this was a fabrication. He no doubt saw Bondi in the yard at about the time mentioned and, by a vagary of memory attributed to Bondi words that he heard spoken, probably by Martini since it was to him that Duckworth said he had two witnesses.

Orice Storey returned to the plant on October 18 with Marjorie Byrd, an employee who had been laid off on October 15. Clarence came and joined them, and they approached Martini, who was standing between the cannery and the warehouse with the superintendent of the packinghouse, identified only as Loui. Orice Storey spoke to Martini asking if she had been discharged. As Clarence Storey had already been given his wife's pay check, I infer that she knew the answer to her own question and that her question was asked merely as an introduction to her succeeding questions. There is a conflict

as to what was said in the ensuing conversation. Orice Storey testified that Martini answered, "Yes, Ma'am, you are fired and that's final," that she asked if her work had been satisfactory, and Martini said, "Yes, you were a good worker, but I cannot have you talking up this union thing and agitating among the other girls and forming committees . . . You are fired and that's final and your husband has your check," that she asked if Martini knew she was on the committee from the day shift, and that Martini replied "he didn't give a damn what committee I was on," and that he then added again, "You are fired and that's final," and that Martini then walked away. Martini testified that Orice Storey merely asked why she was discharged and that he told her she knew why and walked away. He denied Storey's testimony quoting him as saying that he couldn't have her talking up this union thing and agitating and that he "didn't give a damn what committee she was on." Martini testified that he did not recall that Byrd was present, but he did not testify with respect to the packing shed superintendent's presence. Clarence Storey and Byrd gave credible accounts that Orice Storey asked Martini if she was discharged, that Martini answered, "Yes," that Orice Storey asked why, and that Martini said "for trying to form a committee on the night shift." Clarence Storey also corroborated his wife on her testimony regarding her question as to whether Martini knew that she was on the committee and Martini's reply. There was, however, enough difference in the testimony of Byrd and the two Storey's to convince me

that they were testifying on the basis of their own memories.

Although the explanation does not appear to have been advanced before the hearing, the Respondent, at the hearing, justified the discharge of Orice Storey on the ground that Storey had gathered a group of women to talk to in a dangerous location because a fork lift was operating in that locality, raising heavy tanks.

The first time Martini was on the witness stand he gave as the reason for Storey's discharge that Storey called together a congregation of women and stood in an alleyway and that he had told her on a previous occasion (September 22, the day he spoke to Storey and Layman in the cannery office about union talk in the cannery) that he wanted no more occurrences of that, and that since she had done it again, he discharged her. In his testimony of his conversation with Storey and Layman on September 22, Martini did say that he told Storey that he "did not want another occurrence, such occurrence as had just happened that day . . ." but explained the "occurrence" that he had reference to as "that group of women she had there, when she called me down and told me they were going to walk out if I didn't meet with the Union officials." He did not testify that, in his conversation with Storey and Layman, he warned them of any danger and neither did they. At another point, while still testifying as a witness called by the General Counsel under section 43b of the Federal Rules of Civil Procedure, Martini testified that he called Storey in (on Sep-

tember 22) "to tell her about the incident down-stairs, where she had a group of people there, and I told her I didn't want her to do it in the plant." He did not exclude the area under the balcony or any other locality in the plant where the fork lift would not be operating. He did not limit the time to the time when the plant was operating. Even if the fork lift had been operating at the end of the lunch period on September 22 and a hazard had existed on that occasion,⁶⁹ I am not satisfied that they had anything to do with Storey's discharge, for I do not believe that Martini really thought that Storey had "gathered" the women around her on September 25 just before she was discharged. Martini reluctantly admitted that he had seen women sitting or standing in the area near the time clock but testified that he did not know if they were going off shift or on. He may not have known it, but he most likely believed that they or most of them were night shift women. There is considerable evidence that it was a practice for about 10 or 12 night shift women to stand or sit near the time clock before the change of shift. I am satisfied and find that Martini was

⁶⁹ The only witness who appeared to me to have definite recollection of the fork-lift that noon was Lila Layman, who testified that it went through the door while they were there and that they had to get out of the way. But she did not say, and was not asked, if the fork lift was going in or out of the door or whether or not it was carrying any kind of load. The operator may have been just going to lunch for all that appears. Martini testified that nothing heavy was over the heads of the women where they were standing.

not ignorant of the practice, and that he did believe Storey was speaking with night shift women. This is evident from what Martini later told Clarence Storey. Furthermore, the evidence of Martini's annoyance with Storey for her organizational activities and all the other evidence leading up to Storey's discharge justifies the conclusion that Martini did not really believe Storey had, herself, congregated that group of night-shift women near the time clock on September 25. And if he had thought that any danger arose from their being where they were, the natural and logical thing for him to do would have been to ask Duckworth to remove all the women. But there is no evidence that he did so. In fact, the evidence indicates that it was only Storey that he asked Duckworth to send out. Perhaps a reason not involving union activity might have existed to justify a request that only Storey leave, but if there was one, I am convinced that it was not the one which motivated Martini either in causing Storey to be sent from the building or in discharging her. The fact that Storey might have been feigning illness in order to leave work and organize night-shift employees was not relied on by Martini or the Respondent as a justification for her discharge either at the time of her discharge or thereafter.⁷⁰ All the evidence leads to the conclusion that Martini was concerned only with the fact that union talk

⁷⁰ As this was not relied upon, I do not feel called upon to decide whether or not the Respondent might have been justified in discharging Storey for such a reason.

was going on in the cannery building after he had told Storey that he prohibited that, without limiting the prohibition to working time. That Martini knew the night-shift employees with whom Storey was speaking were not yet on duty and that he ascertained that Storey herself had punched out before he discharged her establishes the fact that he believed he could at all times prohibit union talk in the building, whether or not the employees were on duty.

Two women who were in the Respondent's employ on September 25, Joanne Chames Schwartz and Eloyce McPhee Mounger⁷¹ testified that on the day Orice Storey was discharged, they were in the Respondent's main office for some purpose which they could not remember and, according to Mounger, while they were there, Martini entered in a rush, slammed the door and, walking toward one of the men in the office, screamed, "That damn Storey woman . . . she's always talking about the Union . . . I am going to get rid of her . . . I'd rather see the place closed down than see it go union." Schwartz's account varied slightly but she, too, quoted Martini as saying that he was going to get rid of Storey because she talked too much about the Union. Schwartz testified that 10 minutes after the foregoing incident, she asked Floorlady Hardin in the cannery if Storey had been discharged and that Hardin had told her she had, that when Schwartz

⁷¹ Before the time they testified each had been married. The middle names shown above are their maiden names.

asked why, Hardin replied that they could not "have that kind of people around that talk about the Union all the time." According to Hardin, Schwartz (whom she called Chames) came to her on September 25, while she was checking time cards at the rack and said that she and McPhee (Mounger) had been in the office and had heard something about Mrs. Storey being discharged and asked her (Hardin) if Storey had been discharged and that she (Hardin) replied that Storey must have been discharged because her card was missing from the rack. Hardin denied making the last statement quoted by Chames above but testified that Chames kept on talking after she told her that Storey's card was missing, but that she was busy and did not notice and did not recall saying any more. As Hardin had no part in discharging Storey, I do not deem it important to make a finding on the single conflict. Because Mounger and Schwartz were vague about the reason for their presence in the main office, I questioned them some about the time and the reason for their presence. On consideration of the entire record, however, I find that their inability to recall the reason for being there does not impair their credibility and I find that they gave a substantially accurate account of what Martini said.

On all the evidence, I conclude and find that Orice Storey was discharged because of her activities on behalf of the Union, activities which were protected under Section 7 of the Act, in violation of Section 8 (a) (3) of the Act.

2. Discharge of Gloria Pate

Gloria Pate was employed by the Respondent on July 15, 1954.⁷² Despite the advice of Superintendent Beavers, late in July, as previously related, she signed a union pledge card on August 4 and was on the day-shift committee for the Union. According to Pate, Beavers told her in the same conversation that "they" (which I take to be the Respondent's management) had asked him if Pate had anything to do with the Union (inferentially at her former place of employment where she had been active on behalf of the Union) and that he had told them she had not, because he did not want her to lose her job. It does not appear whether or not this had anything to do with the fact that Pate's name was on the retention list as read on October 15. I infer that it did not, because Floorlady Hardin reported to Superintendent Duckworth, when union talk first started, that Pate, among several that she named, was an agitator for the Union. Furthermore, Martini must have been aware of Pate's attitude toward the Union because he had spoken to Pate and her friend Lindsay about it on several occasions, as previously related.

At the meeting in the warehouse when the layoff was announced, Pate heard her own name read but did not hear that of her friend, Gloria Lindsay, who was out sick that day. This testimony conforms to

⁷² For convenience I use the name she went by while employed. She testified under her married name, DeFont.

the retention list in evidence, General Counsel's exhibit 36, which I have found to be the list actually read at that meeting, and with the testimony of Mary Castino.

On Monday, October 18, the next working day, Pate came to work in her working clothes, punched her time card, donned her apron and gloves, and went to her station. Pate testified that she was wearing several union buttons in plain view. About 10 minutes after she had started to work, Foreman Williams approached her and asked her what she was doing there. When she told him she was working, he told her she was not supposed to be there. Williams testified that he did this because Herrerias had told him Pate was not on the list to be working. Pate told Williams (as Pate testified) that her name was on the list to report to work and (as Williams testified) that she had a time card and had punched in. Williams disputed her statement that she was on the list and said he would check. He went up to the cannery office to look at the list and, on coming down, stopped to speak with Superintendent Duckworth. From this point, Pate's and Williams' testimony were in conflict. Because Pate's testimony is more consistent with facts and logical inferences, I credit her testimony and find that Williams returned to her and told Pate he was sorry, that her name was on the list but that it was a mistake and she would have to go home. Pate told Williams that, if she punched out and went home, the Respondent

would have to pay her for reporting to work. Williams said they would pay her for 2 hours.⁷³

Pate then went to the main plant office (attached to the cold storage building) and asked if Martini had come in yet. Told he had not, she telephoned her friend, Gloria Lindsay, to come for her because Lindsay, who had been told by Pate that she had been laid off, was not working and had borrowed Pate's car. Then Pate waited for Martini and when he came, she told him that she had been laid off and asked why.⁷⁴ Martini said he did not know and asked if her name was on the retention list. She said it was and that she came to work and had been told they had made a mistake and she told Martini that they were hiring other people "right now." Martini said he had nothing to do with the list and that the Respondent was laying off in accordance with seniority. Pate told him that people who had worked there for 3 or 4 years had been laid off. Martini

⁷³ Williams testified that, when he looked, he did not find Pate's name on the list and did not find a time card for her, that he so told Pate and that when Pate had said he would have to pay her for a couple of hours he told her that she would have to take that up with management. I do not credit this testimony insofar as it differs from Pate's.

⁷⁴ Lindsay, who arrived at about the same time, attempted to testify about the conversation. Because she was not present at the layoff meeting and thought that the names read there were names of people laid off rather than people retained, she became confused as to whether Pate had said her name was or was not on the list, and I disregard her testimony.

said that earlier years did not count, that it was just the current year that counted. Pate said that she had come to work on the first day⁷⁵ that year. According to Pate, Martini said, "I don't know, I just don't know." Martini denied that the conversation was as related by Pate and testified that she just said she had been laid off and needed the money, that he told her he had nothing to do with the list and that she should apply at the office and there might be a vacancy and she could get back on a later time.⁷⁶ Although Martini may have made such statements also, I find that the conversation occurred substantially as testified by Pate. Errol Wilson, the Respondent's accountant, testified that he had a conversation with Pate on Friday, October 15, right after the layoff meeting, in which he quoted her as asking him why she was laid off. Wilson testified that he told her he had nothing to do with the list and that she should see Superintendent Duckworth. Wilson appeared sure of parts of his testimony about this but not of other parts. It is con-

⁷⁵ A skeleton crew had worked earlier than July 15, 1954, the date of Pate's hiring but very few production employees (as of October 15) had an earlier employment date. I infer that production started on July 15, 1954.

⁷⁶ Such promises had been made to other laid off employees as well, including Marie Tripp, but, although the Respondent, between October 20 and November 6, hired 12 women and 1 man who had not previously been employed by the Respondent, it did not recall Pate or Tripp. Martini had, himself, taken Tripp's name and address for such purpose.

ceivable that he was present when Pate spoke with Martini on Monday or that she spoke with him on Monday while waiting for Martin. I am convinced that Wilson was mistaken about the date of such a conversation. If it occurred at all, I believe, it must have been on October 18. Mary Castino, an employee retained at the time of the layoff, testified that she heard Pate's name read at the layoff meeting, and that she left the meeting with Pate, was with her until they went to their respective cars in the parking lot, and at no time saw Wilson, and that Wilson did not speak to either of them. Castino's appearance, demeanor, and manner of testifying impressed me very favorably and I credit her testimony. Pate also denied having spoken to Wilson on October 15 after the layoff meeting. Pate's testimony throughout was given in a forthright manner, inconsistent with fabrication or concealment, and I credit her denial that she spoke with Wilson at that time.

Some time following the date of the election, Pate telephoned about her pay for Monday, October 18, and the Respondent mailed her a check for 2 hours' pay.

In drawing conclusions as to the reason for the termination of employment of Gloria Pate (Defont), I have considered the fact that, from October 16 to 19, 1954, the purloined union list was in the possession of Superintendent Duckworth. Pate's name was on that list. Although I believe that the Respondent was fully aware of Pate's union advocacy before the date of the layoff, it is certain that if the Respondent had had any doubt of her union affiliation before

time, it had none at the time of Pate's termination on October 18.

Erma Bate, who delivered the purloined union list to Herrerias, I have already found was re-employed on October 18. In addition to Bate a number of others were shown to have been re-employed on that date. In a list furnished by the Respondent to the Board before the hearing (General Counsel's exhibit 42), the Respondent listed the following employees as rehired on October 18: Mary Caddell,⁷⁷ Cornelia (Connie) Jones⁷⁸ Stella Vessels, Theresa

⁷⁷ Caddell's name was on the retention list. Even the retention list offered by the Respondent contained her name. No attempt was made to explain why she was shown as re-employed on October 18. Caddell, one of the women who had come to the Respondent after having been laid off temporarily at the Co-op, testified that a few days after the October 15 layoff she told Herrerias that she had heard rumors that all who signed pledge cards were laid off and that she wanted Herrerias to know that she had signed one, and that if it made any difference, perhaps there was a mistake in her being there. She quoted Herrerias as replying that Caddell had nothing to worry about, that she did not know who signed pledge cards, and that it made no difference to her whether or not Caddell was "union or not union," that she kept her girls from the way they worked. Obviously, part of Herrerias' statement to Caddell was untrue, since Herrerias at that time did know who had signed pledge cards. Caddell may be assumed not to have continued her interest in the Union since she worked during the 1955 season even after the Union had posted a picket line.

⁷⁸ Jones' name was on the retention list introduced in evidence by the General Counsel but not on that introduced by the Respondent. Jones had been employed first on October 4, 1954, after the eligibility date.

Hofland, Edith Wasin, and Etta Urton. Employment dates of these women are as follows: Caddell, September 13; Jones, October 4; Vessels, September 17; Hofland, September 13; Wasin, August 9; Urton, July 20. All of these except Urton were shown to have the job classification of "trimmers." Urton's job was classified as "inspection," the same as Pate's. Urton's time card for October 18 shows that she started work at 10 a.m., almost 2 hours after Pate was released, but she was nevertheless paid for a full day. One might infer that Urton was rehired to take Pate's place. But in the testimony of several witnesses, the inspectors who were working in the week after the layoff were named, and Urton was not named as one of them. Because of this and because of the evidence that none of the women's jobs involved special skill and that women could be transferred from one job to another, the inference is that Urton was not given work as an inspector and did not replace Pate. The Respondent did not offer any excuse for not using Pate on another job. Of the six women just named, only the names of Caddell and Urton appeared on the purloined union list. Although Urton had, on August 19, 1954, signed a pledge card for the Union, she was not, like Pate, on the union committee, and presumably, was not as active as Pate in the Union. Her personnel payroll record shows that she worked many short weeks.

Of the other 26 women named as on the union committee in addition to Pate, the only ones re-

tained or re-employed were Erma Bate, who had delivered the purloined union list to Herrerias, Mary Castino and Clara Davello, both inspectors, Ruthie Deal, and Ernestine Hack.⁷⁹

I have previously stated that, in addition to those shown as rehired on the exhibit just referred to (General Counsel's exhibit 42e), the evidence shows that a number of employees whose names were not on that exhibit were employed, although their names were not on the retention list heretofore found to be a copy of the one read at the layoff meeting. Some in this category with their employment dates are: Marcia Freyling, July 22; Pastoria Hall, July 20; Renee Napier, October 1; Catherine Perry, August 2; Sylvia Peterson, July 19; Jessie Smith, Sep-

⁷⁹ Bate, Castino, Davello, and Hack had worked on the night shift. Each has been mentioned previously herein. There is no clear evidence that they, or any of them, were known by Herrerias to be union organizers or advocates before the layoff list was prepared. Evidence on Deal's employment record shows some conflicts. According to Gloria Pate (De-Font), Gloria Lindsay and Deal were with her while she was speaking with Martini. Documents prepared by the Respondent but offered in evidence by the General Counsel present confusing information. One exhibit (G. C. 42e) shows Deal as last having worked on October 15 and as being rehired on October 23. Another exhibit (GC 40) shows her as having last worked on October 18 and quit. One exhibit (GC 40g), which is a list of employees as of October 19, does not contain Deal's name. One exhibit (GC 19) indicates that Deal was stated by the Respondent to have been absent for 2 days with Respondent's permission. Deal's ballot at the union election was challenged by the Respondent but the challenge was later withdrawn.

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tember 17; Willy Augustin, July 23; Joe Bertoni, September 28; Robert DeVilbiss, July 19; Lloyd Mills, October 11 (4 days before the layoff).

Although Foreman Williams claimed he did not find Pate's name on the retention list which he looked at (contrary to Pate's credited testimony of his admission to her), I cannot believe that the Respondent would have paid Pate for 2 hours' time for October 18, as it did, unless it had been responsible for her being at work on that date. It is not impossible to believe that Pate's name was inadvertently included on the retention list. But even if her name had been on there as a result of the Respondent's subjective mistake in intention, Pate was properly at work on October 18 and no evidence was adduced to justify a "correction" of the error by discharging Pate when, at the very same time, the Respondent was in the act of re-employing a number of laid-off employees. There is not a jot of evidence that Pate's work was unsatisfactory, and she had been at work from the first day of production that season. None of these re-employed had equal seniority with Pate. At the hearing, the Respondent's witnesses discounted seniority as a basis for retention. However, it should be noted that the Respondent represented to the employees at the layoff meeting that the layoffs were made on the basis of seniority, and it mailed a letter signed by Manager Martini to each laid-off employee with his final pay check containing the statement, "In fairness to all of our employees, we have kept on our payroll those of you that had the earliest employ-

ment date." (GC 25) Weighing all the evidence, I infer and find that, in terminating Pate's employment on October 18, the Respondent was motivated by a desire to rid itself of the more active and outspoken proponents of the Union, of which Pate was one. I conclude, therefore, that in terminating Pate's employ on October 18, 1954, the Respondent discriminated in regard to her hire and tenure of employment in violation of Section 8 (a) (3) of the Act.

3. The discharge of Elsie Dickerson

Elsie Dickerson, who had worked for the Respondent in 1953, was again employed by the Respondent in 1954. Her starting date in 1954 was July 19. On the day shift throughout, she was first put on the job of trimming. During September she was transferred to the slicer for a day or two at a time and finally was kept there steadily. She signed a union pledge card on August 4, 1954, and attended union meetings but was not on the union committee. On October 14, when other union employees wore union buttons, Dickerson did, too. She was not, however, laid off on October 15, and on October 18, the next work day, she returned to her job on the slicer without being assigned to it by Herrerias.

On October 19, the day of the union election, just before quitting time (5 p.m.), Herrerias called out Dickerson's name. Dickerson went to Herrerias, who told her that Manager Martini wanted her in his office. When Dickerson went to Martini he told her, "They want you over there," pointing to the packing shed where the election was being held.

Dickerson apparently was wanted as an observer for the Union, because she acted as one although she had had no earlier notice that she would serve.

On October 23, Dickerson asked permission of Herrerias, who had become day-shift floorlady after the layoff, to change positions with an employee named Ruth Deal (previously mentioned in the discussion of Pate's discharge) and Herrerias granted it. Deal's job description was shown as "can car," but I infer that, when she was re-employed on October 23, she was given a job on the trim line. Deal was listed on an exhibit as on the union committee. On Monday, October 25, Dickerson again exchanged with Deal after lunch until about 3 p.m. This time she did not ask Herrerias for permission to make the change. Whether or not Deal did does not appear, but the Respondent makes no claim that Dickerson's failure to get permission to transfer was in any part a cause for her discharge. At about 2:30 p.m., Dickerson, while on the trim line on October 25, finding work somewhat slack because few apples were in the flume, picked up an apple that had been peeled and cored, used her coring knife to put two bisecting cylindrical holes horizontally through the apple, placed a core in one of the holes, protruding about an inch, and placed it back in the flume. Dickerson spoke of this as "decorating" an apple. This apple was removed further down the line either by an inspector named Virginia Chicano, who has already been mentioned in connection with the case of Orice Storey, or by Herrerias.

At 3 p.m., Dickerson went back on her regular job on the slicer. When she came down at quitting time, Floorlady Herrerias came to her, put her arm around Dickerson, and said, according to Dickerson, "I have something to do that I don't like to do, I have to let you go." When Dickerson asked why, Herrerias replied, "You were seen making holes in an apple and you put a core in it and put it in the water and it got to the office." Dickerson acknowledged making holes in the apple and told Herrerias that she had expected to be discharged. She testified that she had expected it because she had been picked as an observer in the election. Dickerson denied that she had fixed more than one apple as above described.

Herrerias' account of Dickerson's discharge in her testimony and in her affidavit differed. But in both she averred that she saw a number of such apples. Herrerias was not sure of dates and it is somewhat difficult to follow an orderly sequence of events in her testimony. By drawing inferences from her testimony, I judge that she was referring to the dates I have already identified as the two on which Dickerson and Deal changed jobs. With a substitution of dates for her indefinite references to time, her testimony was that on October 23 she saw apples (apparently like the one fixed by Dickerson) coming from the direction of the trim line to the position of the inspectors (whose job it was to catch any imperfect, or imperfectly trimmed, apples, or any foreign matter) and she asked "the inspector" (who, I infer, was Virginia Chicano,

although at that time there were three others) if many apples of that kind were coming down, and the inspector replied that quite a few were; so, according to Herrerias, "I just walked up and looked at *it*" (Italics supplied) and then began to investigate. She went behind the peeler line, she testified, because it was raised above the trimmers and she could look down at the trimmers, and from there she watched Dickerson and saw her "do that" to two apples. Herrerias did not speak to Dickerson, however. On Monday, October 25, Herrerias testified, she again saw apples in the same condition come down the line and asked Chicano to put aside all apples in that condition — Herrerias thought Chicano had two or three. She asked Chicano, she testified, how many there were and Chicano said that "they weren't as bad as the first." Then, she testified, "I took *the* apple (italics supplied) and showed Mr. Duckworth [the superintendent] and he told me to let her go, and I said, 'No, we will wait until the day is over.'" She let Dickerson finish the shift and then told her that she was discharged. Although Herrerias testified to apples "in that condition" in the plural, it is significant that she twice used the singular. Although she testified that on the first day she, herself, saw such apples in the flume, and although she asked Chicano if many apples were coming down "like that," and although she was told that there were quite a few, she testified that she went up and looked at "it." This also is inconsistent with Chicano's testimony, as will be shown later. If there were any other such apples,

I would have to conclude from Herrerias' testimony that the inspector must have removed them from sight or found them unobjectionable and let them go through. Again, although Herrerias gave the impression that on October 25 there was more than one apple with extra core holes, she testified that she took "the apple" to Duckworth. In her affidavit, made in February 1955,⁸⁰ Herrerias averred that she had seen Dickerson double-core two apples, putting a core back in one of the holes, on the first day and that she did not see her do it on the second day but assumed that she had done it because it only happened when Dickerson was on the trim line. In her testimony, she said that when she discharged Dickerson, she explained to her that she was discharging her because "you are making holes in the apples and throwing them down in the water." In her affidavit she averred that she had told Dickerson she was releasing her "because she'd cored *the* apple and put a core in *it*." (Italics supplied.)

Chicano, one of the four inspectors, testified on direct examination for the Respondent that she saw two or three dozen great big apples with cores sticking in the side come down toward her, that she put about five or six in a box which Herrerias came by and took away without saying anything that Chicano could hear. Chicano also contradicted Herrerias by testifying that she did not say anything to Herrerias. On cross examination, Chicano testified that the two or three dozen such apples were di-

⁸⁰ The affidavit is erroneously dated in 1954, which would be before the events herein related took place.

vided between the two days (October 23 and 25) and that she did not have room to put all such apples aside, so she removed the core and let the apples go through the slicer, except for five or six on the first day and three or four on the second day which she put in a box.

The four inspectors are arranged on the line in pairs side by side. The only other one to testify was Mary Castino who was called by the General Counsel and who testified that she saw one apple come through with holes through it and a core sticking out, that she saw someone, Herrerias, she was pretty sure, pick it up and walk around back of the trimming table. She testified that she had seen nothing else unusual about the apples coming through in the 2 or 3 days preceding this. If apples of the sort had come through in such large quantities as testified by Chicano, it is inconceivable that all of them would have gone to Chicano and that the other inspectors would not have seen them. Chicano was apparently strongly anti-union. Castino had been a union employee. Each, therefore, might have some bias in the matter. But Castino made a more favorable impression on me than Chicano from the standpoint of credibility and showed no evidence of bias as did Chicano. Chicano's exaggeration was obvious. I find that Castino's testimony is reliable, whereas Chicano's is not. In her affidavit, Herrerias avers that she spoke to Clara Davello, another of the inspectors, in addition to Chicano. But in her testimony she did not mention speaking to Davello, and Davello was not called as a witness.

Castino, the inspector called by the General Counsel, testified that around Hallowe'en time in 1954, a number of apples carved with pumpkin faces came down the line and that, if those apples were not too badly carved up, she would trim them up and send them through. Castino also described another apple which came down the flume in about November 1954. This one had a glove finger sticking out of the core hole. At that time Edna Hardin, the former floorlady of the day shift was working beside Castino. The latter testified that Hardin picked it up and handed it to Chicano but that nothing was said. The record is replete with instances of a variety of objects floated in the flume by employees to provide a laugh. Hardin testified to an instance when she removed something from the water that she believed Chairman Tony Bondi had put there. It was apparently placed there to cause some excitement. Bondi was present when the excitement occurred, but he testified that he did not put the object in the flume and that he sent someone into the cannery to remove it. As Hardin testified that she removed it, Bondi's emissary presumably was quite tardy.

Superintendent Duckworth testified that "Dickerson actually sabotaged our product" and that for that reason she was discharged. He testified that he made the decision to discharge her "after she had been warned not to plug those apples" and, when she did it again, he discharged her. Duckworth was not clear as to whether the events leading to Dickerson's discharge occurred on one or two days or

how many times Herrerias spoke with him, but then he testified that Herrerias first came to him in the morning and told him that someone "had been plugging these apples," showing him the apples (in his affidavit he said that Herrerias showed him "an apple"); that he told Herrerias to find out who was doing it, and that a couple of hours later Herrerias returned to him with more such apples (in his affidavit he said "another apple") and told him that she had seen Dickerson plugging the apples; that he told Herrerias to warn Dickerson not to do it—"a little horseplay is all right, but something like this could materially affect the quality of our product, so I asked her to tell Dickerson not to do it." It was either the same day or a subsequent day that Herrerias came to him again, he testified, showed him two more such apples and said it happened again (this third occasion was not mentioned at all in Duckworth's affidavit). Then, Duckworth testified, he told Herrerias to discharge Dickerson, but Herrerias said, "You better wait until the end of the day, it might look better, if you don't want to disrupt the crews." Duckworth said that he concurred in this. For the purpose of comparison with their testimony and the accounts given by each other in both testimony and affidavit form, and as an aid to understanding the credibility conflict, I set forth here the portions of Duckworth's and Herrerias' affidavits dealing with Dickerson's discharge.

Duckworth's affidavit, made on March 18, 1955, contains the following account of Dickerson's discharge:

The decision to discharge Elsie Dickerson was made by me on the afternoon the discharge took place. During that morning Floorlady Herrerias brought me an apple which had been plugged. By that I mean that after the apple core had been removed a hole had been cut in the side of the apple, and an apple core placed in this hole. I asked Floorlady Herrerias who had done it and she told me that Dickerson had. I asked Herrerias if she had seen Dickerson plug the apple and Herrerias replied that she had not but that the girl in the trimming line had seen Dickerson do it. Herrerias also told me that she had questioned Dickerson about the matter, and Dickerson had admitted that she had done it. In addition Herrerias told me that Dickerson had done this before, and recommended that Dickerson be discharged. I had not known that Dickerson had plugged an apple before. I told Herrerias to give Dickerson another chance. About an hour later that same morning Herrerias brought another apple which had been plugged and said Dickerson had done it again. I did not ask her if she had seen Dickerson do it on this occasion, but told her to discharge Dickerson at the end of the shift. Herrerias discharged Dickerson that afternoon at the end of the shift, when her time card shows it was punched out.

It will be observed that, in his affidavit, Duckworth avers that he told Herrerias to give Dickerson another chance but says nothing about having told Herrerias to warn Dickerson not to do it again, as

appears in his testimony. Herrerias admitted on the witness stand that she had not spoken to Dickerson at all about the incident before she discharged her.

Herrerias' affidavit, with respect to Dickerson, reads as follows:

After the layoff on October 15, 1954 I became day shift floor lady. Elsie Dickerson worked under me then. I discharged Mrs. Dickerson. I don't recall the date I discharged her, nor do I recall the day of the week. Mrs. Dickerson was very, very talkative and disturbed other employees. She was working on the seed cellar, the slicer, when I first noticed this. Then Mrs. Dickerson asked me if she could go back behind the lines, that is, to go on the trim belt one afternoon, and I let her. That afternoon I noticed apples in the water, in the trough, that had been double cored and then had a core shoved in one of the two core holes. That first afternoon I noticed at least 5 or 6 such apples. When I noticed the apples that were fixed this way they were coming through the squirrel cage. I removed two such apples and showed them to the inspectors, the women who work on the second trim belt, and asked them if there were many such apples coming through. I asked Mrs. Chicano, I know. Mrs. Davello, Mrs. Mahoney and one other woman were also on that belt. I also asked Mrs. Davello, but I don't recall asking the others. They replied that they had taken out a few such apples. I took one of the two such apples and showed it to Mr. Duckworth, and

I said, "Mrs. Dickerson is doing this to the apples. I've been watching her." I don't recall what Mr. Duckworth replied; he may have said to keep watching her. Before going to Mr. Duckworth with the apple I went back up the line to try and find out who was cutting up the apples this way. I went to a position behind the peelers. The peelers are elevated above the first trim belt. Mrs. Dickerson was on the first trim belt. From that position I observed the employees who were on the trim belt. There were four women on the belt, as I recall. I watched Mrs. Dickerson; she was talking away with the other women on the belt, Isabelle Ameral, Mrs. Albini, and Gertrude Jones, she was next to Mrs. Ameral, as I recall, and I saw her pick up an apple, bore a hole in it with her knife, put a core in the apple, and then put it in the trough. I saw Mrs. Dickerson do it to two apples that first afternoon. I did not speak to Mrs. Dickerson about it. That first afternoon I did ask Mrs. Chicano and Mrs. Davello to be sure and catch any apples fixed the way I saw Mrs. Dickerson fixing them. Mr. Duckworth was the only person I told that Mrs. Dickerson was doing this, as I recall, although I may have mentioned it to Mr. Williams, the manager; I did not tell the inspectors who was doing it.

The next day, I don't recall whether it was in the morning or afternoon, without asking my permission, Mrs. Dickerson went back to the trim belt. I saw Mrs. Dickerson on the trim belt after lunch. I didn't say anything to Mrs. Dickerson. I did go to Mrs. Chicano, and probably Mrs. Davello too, and

asked them to watch and see if any more of those double cored apples came through. Then later, I went back to Mrs. Chicano and she showed me an apple she had put to one side. The apple was double cored and had a core in it. I asked Mrs. Chicano if there had been very many and she said not as many as the day before. I took the apple and showed it to Mr. Duckworth, and asked him what I should do. Mr. Duckworth said, "Let her go." He wanted me to let her go then and there, but I didn't want there to be any disturbance and so I said we'd better wait until the end of the day and he agreed. I can't recall whether it was morning or afternoon that I spoke with Mr. Duckworth about Mrs. Dickerson on this second day. I did not mark Mrs. Dickerson's time card until closing time that day; I marked it "released." I did not speak to Mrs. Dickerson before I spoke to Mr. Duckworth. So then at quitting time I told Mrs. Dickerson that I was sorry but I'd have to release her. She was on her way over to time out when I told her. She said, "Why?" and I said because she'd cored the apple and put a core in it. Mrs. Dickerson said, "I was only playing. I didn't mean any harm by it." She turned to a friend and said something like, "What do you know, I just got fired for playing with an apple or putting an extra core in the apple" and that she had done it before.

I had not seen Mrs. Dickerson double core an apple and put a core in it the second day, the day I discharged her. I assumed that she had done it because I had seen her do it the day before and

because it hadn't happened when she was not on the belt.

The several disparate accounts convince me that Duckworth and Herrerias attempted to bolster their stories by multiplying the number of "plugged" apples, the number of times on which Dickerson made such apples, and the number of times that Herrerias spoke with Duckworth about the matter, as well as by Duckworth's testimony about telling Herrerias to warn Dickerson. I am also convinced that Chicano adapted her testimony to the same end. I find, therefore, that Dickerson was never warned against making holes in apples or plugging them and that Herrerias discharged her for the only known instance of it as testified by Dickerson.

That Dickerson was playing when she should have been working and that an employer has a right to discharge an employee for playing on the job is not controverted by the General Counsel, I take it. But the question is, absent an animus against the Union, would the Respondent have discharged Dickerson for what she did? Herrerias admitted that she had seen "decorated" apples, that is, apples with faces carved in them and offered no criticism of employees who had carved them, but she testified that such apples had been perched up in front of the employees and had not been put back in the flume. (This, of course, is contrary to the testimony of Castino.) From this, I infer that the Respondent was not perturbed by the fact that an occasional apple, out of the tons of apples that went through the cannery, met an end which was inconsistent

with its normal destiny. If the Respondent was perturbed at all, I infer, it was because the carved apple was put back in the flume, with or without a core in it. Herrerias testified that she had never seen unusual objects in the flume. This, I find it difficult to believe in view of the testimony of the variety and number of objects that were either accidentally or intentionally set afloat in the flume, especially since Herrerias gave every evidence of being an observant person, as a competent floorlady would need to be, and because she was quick enough to see the apple carved by Dickerson on the one occasion. If, for the sake of argument, it be assumed that Herrerias had, in fact, not watched the flume close enough to notice such objects, even though such objects might endanger the quality of the product if they should succeed in passing through to the slicer or chopper, the question is raised as to whether or not the Respondent acted as it normally did. Would the Respondent have discharged any employee for carving an apple either with or without replacing the core, without prior warning, regardless of the union interest of such employee? Although such a discharge would appear unduly harsh in a case of an act that does not require an on-the-spot discharge, the Respondent may not be found to have discriminated against the discharged employee if it was accustomed to making discharges on slight provocation and without prior warning. In determining what course the Respondent would follow, I have considered, among other things, the following: Duckworth appeared to feel that a little

horseplay was all right, but that sabotaging the product was not. In view of this testimony and of the extensive amount of horseplay or practical joking and of decorating or making doll apples, that went on, I deduce that playing, alone, in small doses was unobjectionable. The loss of an apple also appears to have been regarded as of small consequence since the makers of decorated apples or doll apples were apparently not reprimanded. Hence, if Dickerson's conduct was of serious consequences it was solely because she made an additional core hole in an apple and put a core back in that hole. Now, if this were actually believed by the Respondent to be a danger to its product, then why, without warning Dickerson against it (as was admitted by Herrerias to be the case), did the Respondent not discharge Dickerson on the spot instead of running the risk that Dickerson would do the same thing again before the day was over? Duckworth's explanation was that Dickerson would not have been likely to do it again because she was being closely watched. This explanation lacks conviction, however, since Herrerias did not let Dickerson know that she was watching her. Furthermore, the floor-lady could not be expected to spend all her time in the one spot watching Dickerson and neglecting her customary supervisory duties. I infer that if any danger existed, the Respondent considered it extremely slight. Even if, as Herrerias would have it believed, Dickerson was not discharged on the first day on which she was observed making a "plugged" apple, Herrerias was taking a chance on a repeti-

tion which she herself did not expect to observe, for Herrerias was obliged to rely on the inspectors to catch other such apples just as they had caught the one Dickerson is known to have made. This scarcely looks like a case of imminent danger or "sabotage." There is evidence that occasionally the machine which was supposed to core the apples would fail to remove the core of an apple. If the core in such case were not removed by one of the peelers or trimmers, it would certainly have been caught by the inspectors. Although, at the hearing, the Respondent's witnesses sought to portray Dickerson's act as a grave danger on the assumption that the core in her apple might have passed the inspectors, Martini, in an affidavit made before the hearing, stated that it was "inconceivable" that plugged apples could have gotten past the inspectors. And if the core had got past the inspectors and gone through the slicer, there was a shaker screen that would have removed seeds and small particles. Also there were women to remove specks when apple sauce was being made. On one occasion in September 1954, the shaker screen was found not to be coarse enough to remove many small chips. There were employees there to remove them but they were finding difficulty in removing all of them. Martini preferred to continue running, anyway, for a couple of weeks until a new screen was obtained. Such indifferent concern to the fact that parts of the apple were getting into the product when they should not is inconsistent with labeling Dickerson's act as a sabotage of product.

In view of such evidence, I am convinced that Dickerson's playful act would, in itself, not have prompted the Respondent to discharge her, especially without warning, since this was apparently the first instance of a discharge for such cause. On the other hand, the Respondent was antipathetic to the Union and was shown to have a disposition to discharge prominent union employees for slight cause, as is evident from Hardin's testimony concerning an admission of such conduct by Herrerias in the case of three employees whom she discharged in September 1954 and from the discharges of Storey and Pate as herein related, not to mention the discriminatory elimination of a disproportionate number of union employees in the October 15 lay-off. I am persuaded by all the evidence, and therefore find, that the Respondent made use of slight cause to discharge Dickerson (for which it would not normally have discharged an employee) because she was a prominent union supporter, as was known to the Respondent from the fact that she had been called by Herrerias and Martini to serve, and did serve, as a union observer at the time of the union election less than a week before the discharge.⁸¹ By discharging Dickerson, the Respondent discriminated in regard to her hire and tenure of employment in violation of Section 8 (a) (3) of the Act.

⁸¹ See *N. L. R. B. v. Homedale Tractor & Equipment Company*, 211 F. 2d 309 (C. A. 9); *N. L. R. B. v. Dant & Russell, Ltd.*, 207 F. 2d 165 (C. A. 9).

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondent, set forth in Section III, above, occurring in connection with its operations described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. The remedy

As I have found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Since I have found that the Respondent discriminated in regard to the hire and tenure of employment of certain of its employees, by its acceleration of the time for termination of the night shift for unlawful purposes, the remedy should embrace all those who were affected by the early termination of the night shift, whether such employees were pro-union or not and whether the persons affected were only employees not on the retention list or whether they also were those who worked on the night shift and could not work on the day shift even if the Respondent had them on its retention list and had offered to give them work on the day shift.

In determining what employees should be included in the remedy, I shall have to pass on an issue raised by the Respondent's contention that

certain persons quit on October 15 before the layoff became effective.

The Respondent contended that a number of employees had clocked in on the night shift on October 15, attended the layoff meeting in the warehouse, and then left without finishing the shift, and that, by leaving then, they had quit and were not laid off. Evidence as to these employees, whether or not they were all present on October 15, and their reasons for failure to return to work on the night shift if they were, is not altogether clear. The evidence suggests in some instances that employees who were either laid off or who, although on the list to be retained, could not switch from the night to the day schedule for family reasons, failed to work after the layoff meeting because they considered it not worth their while in view of the fact that they would be through for the season in a short while anyway. Although it is not a matter of evidence, it is a reasonable inference that some employees who knew they were being laid off may have left in order to get ahead of an anticipated rush for jobs at other canneries. Some apparently felt aggrieved at not being retained for work after October 15 and left in disgust. Some may have left because they misunderstood that, even though they were not retained, they were expected to finish out the night shift that night.

A basis for such a misunderstanding as that which was last mentioned is apparent from the evidence. Duckworth testified that all night-shift employees were notified to work that night after the

meeting, but the manner in which they were notified does not appear to have been adequate to assure notice to all and to avoid misunderstanding. Duckworth testified that he told some employees himself and told Floorlady Herrerias and Foreman Williams to notify "the people who were to work on the night shift to be sure to return that night." Williams testified that he told the night-shift employees that "we would run a night shift as soon as the meeting was over in the warehouse." But Williams could not say for sure that he had notified each and every employee who came to work on the night shift, and, from the testimony, I infer that the notification was a rather haphazard one, so there is a reasonable chance that some failed to receive notice. To assure complete notification, an announcement should have been made at the warehouse meeting. This not only was not done, so far as the evidence shows, but what was said at that meeting could have left night-shift employees in some doubt or confusion. Just before reading a list of the employees to be retained, McGuire made a statement that those who were not retained could turn in their caps and aprons and get a refund. He apparently did not add that they should not turn them in before the completion of the night shift. Those not listed for retention, therefore, may reasonably have understood that a night shift would operate that night, but that only those whose names were read by McGuire for retention were to work on it.

In its exceptions to the Regional Director's re-

port on challenged ballots, the Respondent listed the names of 20 employees who, allegedly "severed their employment with the Employer by not reporting for work on the night shift on October 15." The argument made by the Respondent in such exceptions appears to limit its objection to those of the employees who punched in for work on the night shift on October 15 but who left without completing the shift. At the hearing, however, the Respondent deleted the name of Ensebia Carrera, one of the 20 named in such exceptions but added 10 more names, thereby increasing its list to 29 names of employees who allegedly quit. But the additions were not confined to employees who had punched in on the night shift on October 15. Included were some who had not come to work at all. The Respondent produced time cards for October 15 for some of the 29 employees. These cards showed that some of the 29 had punched in before the warehouse meeting and had either punched out at the end of it at 4:30 p.m. or had not punched out at all.⁸² One of the employees whose name was added at the hearing was Anna Hance, a day-shift employee. On Friday, October 15, 1954, she punched in at 6:35 a.m. and

⁸² Virginia Brott, Elizabeth Cooley, Kathleen Hontar, Norma Morien, Bernice Nunes, Richard Breuer, Evelyn Schrum, among others.

Albert Rahm, whose time card was produced, punched in at 4:56 p.m. (long after the warehouse meeting was over and others had punched out) and had punched out at 5:31 p.m. There is no evidence as to why he punched out at that time. So far as appears, he may have been told by a supervisor to leave.

punched out at 10:57 a.m. A penciled notation at the top of her card said "Quit" but the handwriting was unidentified, so there was no evidence as to when it was put on there or by whom. I give it no credit as a record.⁸³ So far as appears from the credited evidence, Hance may have gone home ill or been temporarily laid off. She was shown as again working on October 30, 1954. However, testimony was given concerning several of the others. The names of employees Pauline Ploxa, Dora Rawles and Josephine Geist, among others, were added at the hearing to the Respondent's list of employees who allegedly had quit. All were shown by the General Counsel's exhibit 36 as listed for retention, except that Geist was spelled Gust. Ploxa and Rawles went to Manager Martini after the warehouse meeting, told him their names were on the list to be retained but said they could not work days. They asked Martini if they had to work that night. He told them that they did not have to but, as they were there, they might as well. They went home without finishing the shift.

One of the employees listed by the Respondent

⁸³ The evidence indicates that the Respondent frequently indulged in presumptions that employees had quit where the employee was absent for an excusable reason and that in such cases, when the employee returned, the Respondent would put him on again and the supervisor would make out a time card for him if none had been prepared in advance by the office. The Respondent takes the position that it did not refuse to take back employees who had been out because of illness. In several instances the word "quit" was written on a time card or payroll record when the employee actually was out sick.

as having quit was Susie Coats. Her time card showed that she had not worked after October 12. She testified that she had been home sick and was still out sick on October 15, and that when another employee told her she was dropped she did not return although she had expected to return to work the next day.

I note that some other employees, not listed as having quit, also did not work on October 15, but were not included on Respondent's list of quits. For all that appears, Julia Ann Row had not worked between October 6 and 28 but she was not shown as having quit and the records contained no explanation of her absence. The case of Erma Bate has been previously related. She had left in a huff after the warehouse meeting because her name was not on the list, but she was back at work on October 18 with the Respondent's approval. Stella Vessels did not work from after noon on October 13 until sometime in the following week, during which she worked 40 hours. Edyth Wasin had not worked after October 11 until Monday, October 18. Edna McCarl did not work at all in the week ending October 16. Ruth Albertoni was shown by the Respondent's records as not having worked after September 27 and a handwritten notation "Quit" appeared on her card, but a challenge of her ballot by the Respondent was withdrawn when she was later shown to have been sick. It is needless to list all such cases. I am satisfied that Coats did not quit and that insufficient evidence of an intention to quit was shown in other instances where the employee did not work on October 15.

Assuming, for the sake of argument, that more than the few whose time cards are in evidence as above stated came to work on the night shift on October 15 but left without finishing the shift, should they as a matter of either fact or law be said to have quit? Duckworth gave testimony which, if believed, might prove one employee's intent to quit. He testified that he asked an employee named Richard Breuer where he was going, as Breuer was leaving, and that Breuer replied, "If I'm not going to work any more this year I may as well just quit right now." In his prehearing affidavit, Duckworth stated:

After it [the warehouse meeting] was over I went into the cannery and I saw a number of the employees walking out. I asked Mrs. Herrerias what they were doing, and she said they did not want to finish work. I did not talk to any of the employees myself.

The evidence indicates that the warehouse meeting lasted until about 4:30 p.m. Breuer's time card was punched out at 4:17 p.m. If he left at that time, it is unlikely that Duckworth even saw him. I find that Duckworth's testimony about Breuer is not reliable enough on which to base a finding. The Respondent, itself, adduced evidence that employers try to avoid giving advance notice to employees that they will be laid off at a certain future time because it is the nature of employees not to remain until that time arrives. I see no reason to differentiate Breuer's case from that of any of the others who

punched in and then left on October 15 before the night shift ended. I find that they had no intention to quit independently of the layoff.⁸⁴

Since I have found that the Respondent terminated the night shift on October 15, in advance of the customary time, for discriminatory reasons by means of diverting its supply of apples to the Co-op, all those who lost work with the Respondent after October 15 because there was no night shift on which to work and because they either were told they were not to be on the day shift thereafter or, because they could not work days were the objects of the Respondent's discriminatory act. Ploxa and Rawles were, in effect, given permission not to work the last shift. If the others who were present on the night of October 15 and did not finish the night shift because they were being laid off anyway did not actually have their employment terminated by Respondent at the time they left, they were constructively terminated by the Respondent's announcement of discriminatory layoffs.⁸⁵

Absent the unlawful variance from its normal, nondiscriminatory practice of laying off the night crew first, those who worked on the night shift in 1954 would have been continued until such date as, in the usual course of events, the Respondent would have terminated the night shift in 1954. It may be argued that this is impossible now to determine.

⁸⁴ Hunt Heater Corporation, 108 NLRB 1353.

⁸⁵ Jos. N. Fournier, Rome Lincoln-Mercury Corp., 86 NLRB 397; Hunt Heater Corporation, 108 NLRB 1353; Marlo Offset Printing Corp., 113 NLRB No. 93.

But although it is not determinable with scientific exactitude, a reasonable approximation can be computed by determining the length of time the night shift would have been employed to can some 1300 tons of apples, the amount unnecessarily transferred to the Co-op. Taking into account that the day shift was continued until December 11, 1954, to can approximately 1940 tons of apples (the amount in inventory on October 15 plus the amount delivered by growers to the Respondent after that date by my calculations) I figure that the night shift, working on the same days and at the same rate of production as the day shift would have had enough apples (had the Respondent not transferred them to the Co-op for discriminatory purposes) to keep it employed until approximately November 27, 1954. I shall therefore recommend that the Respondent make whole those of the night shift who were actually or constructively laid off on October 15, 1954, or who were unable to continue on days thereafter, for any loss occasioned by the discrimination against them, by paying to each of them an amount equivalent to that which, but for the discrimination, he normally would have earned in the Respondent's employ from October 15 until November 27, 1954, or until the date of their re-employment by the Respondent if that was sooner, and that the Respondent make whole those of the day shift who were laid off on October 15, for any loss suffered as a result of the discrimination against them by paying to each of them an amount equivalent to that which he would normally have earned from

October 15 until December 11, 1954, the end of the canning season, or until the date of their re-employment by the Respondent if that was sooner, less, in each case, whether day or night-shift employee, his net earnings elsewhere during the period indicated.⁸⁶ A list of all such employees entitled to back pay will be found in Appendix B, hereto attached and made a part hereof. I exclude from such list those who were shown to be on the list for retention and who did not work thereafter unless evidence was adduced to show that they would have worked on the night shift but could not have worked on the day shift. Thus Josephine Geist is not included, because it does not appear that she could not work on the day shift.

I shall further recommend that the Respondent make whole Orice Storey, Glora Pate, and Elsie Dickerson for any loss suffered as a result of the discrimination against them by paying to each of them a sum of money equivalent to that which each would have earned in the Respondent's employ between the date of her discharge and December 11, 1954,⁸⁷ less her net earnings⁸⁸ during such period.

⁸⁶ Crossett Lumber Company, 8 NLRB 440, 447-498; Republic Steel Corporation v. N.L.R.B., 311 U. S. 7. If applicable in any instance involved herein, the net earnings shall be computed on a quarterly basis in accordance with the Board's established practices described in F. W. Woolworth Company, 90 NLRB 289, 291-4.

⁸⁷ The dates of discharge are: Storey, September 25, 1954; Pate, October 18, 1954; Dickerson, October 25, 1954.

⁸⁸ See Footnote No. 86.

To implement the effectuation of this recommendation I shall recommend that the Respondent preserve and make available to the Board, upon request, its personnel payroll records, time cards, and other records containing information on rates of pay, earnings, and other pertinent data.

As the unfair labor practices committed by the Respondent indicate a disposition to interfere with the basic rights of employees guaranteed in the Act and as I find that a danger exists that the Respondent in the future may continue, although not necessarily by the same means, to defeat self-organization of its employees, I shall recommend that it cease and desist not only from the acts herein found to violate the Act but from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

Conclusions of Law

1. General Truck Drivers, Warehousemen and Helpers Union, Local No. 980, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.
2. By discriminating in regard to the hire and tenure of employment of Orice Storey, Gloria Pate (DeFont), Elsie Dickerson, and all employees listed in Appendix B hereto attached, thereby discouraging membership in the aforesaid labor organization, the Respondent has engaged in and is engag-

ing in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that the Respondent, Sebastopol Apple Growers Union, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in General Truck Drivers, Warehousemen and Helpers Union, Local No. 980, AFL-CIO, or any other labor organization of its employees by discriminating in regard to their hire or tenure of employment or any term or condition of employment; and

(b) Requiring applicants for employment to answer any question concerning their union membership; and

(c) By threats of reprisal, unlawful interrogation, or in any other manner interfering with, restraining, or coercing its employees in the exercise

of their right to self-organization, to form, join or assist the aforesaid labor organization or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which, I find, will effectuate the policies of the Act:

(a) Make whole Orice Storey, Gloria Pate De-Font, Elsie Dickerson, and each of the employees whose names are listed in Appendix B hereto attached for any loss they may have suffered as a result of the Respondent's discrimination against them, in the manner set forth in the section above, entitled "The remedy";

(b) Preserve and make available to the Board or its agents, upon request, for examination or copying, all personnel payroll records, time cards, social security payment records, employees' income tax report records, and all other records and reports necessary to analyze the amount of back pay due under the terms of this Recommended Order;

(c) Post at its plant at Sebastopol, California, copies of the notice attached hereto and marked Appendix C, to which shall be attached copies of

the list attached hereto and marked Appendix B. Copies of such notice and list to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by an authorized representative of the Respondent, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices and lists are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Twentieth Region, in writing, within 20 days from the date of the receipt of this Intermediate Report of what steps the Respondent has taken to comply herewith.

It is further recommended that, unless within 20 days from the date of the receipt of this Intermediate Report the Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the Board issue an order requiring the Respondent to take the action aforesaid.

Dated this 7th day of March, 1956.

/s/ JAMES R. HEMINGWAY,
Trial Examiner.

APPENDIX A

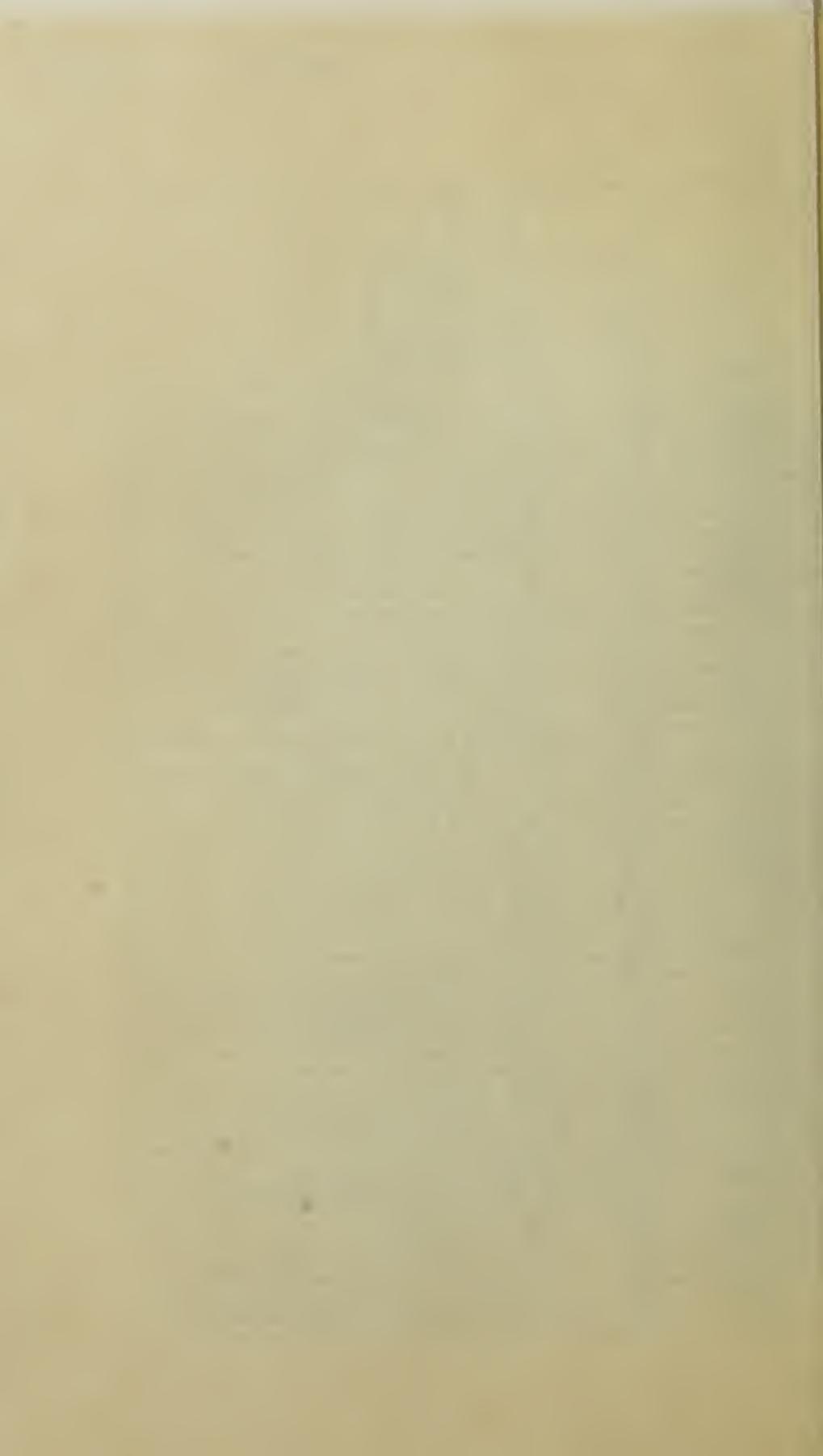
WOMEN

Name	Date Hired in 1954	Shift	Signed Union Card				Name Read on Retention List	Marked on or after 10/19
			D	N	Name on Purloined Union List	On Union Committee		
ALBERTONI, Ruth	8/9		x	x	x		S	
ALBINI, Dora	7/15	x	x	x		x	x	
ALLEN, Lois	9/13	x				x	x	
ALLEN, Marceline	9/28	x	x	x				
ALLAN, Mildred	9/2	x				x		Sick on 10/12(last date wrkd)
AMERAL, Isabele	7/16	x	x	x	x	x	x	
AMERAL, Lina	7/9	x	x	x	x			
AMES, Nora	8/2	x	x	x	x			
ANDERSON, Caroline	9/13	x	x	x				
ANGLE, Marvel	10/5	x	x					
ANTONE, Bertha	10/7		x					
ANTONE, Eva	9/13	x	x	x				
ARMERUST, Joyce	7/20	x				x	x	
AUGUSTIN, Elisabeth	7/16	x	x			x	x	
AWENDER, Karolina	7/15	x	x	x				
AZEVEDO, Virginia	10/12	x						
BAKER, Bonnie	9/23	x						
BARTLETT, Marie	7/15	x				x	x	
BATE, Erma	7/19	x	x	x	x			
ERTOLI, Gereline	8/24	x				x	x	
ERTOZZI, Eleanor	7/20	x				x		
BILLS, Julia	7/21	x	x	x	x	x	x	
BLAIR, Ethel	7/22	x	x	x				
BONAR, Julia	7/20	x				x	x	
BRENNAN, Ruth	7/20	x				x	x	
BRICKNER, Bessie	7/20	x	x	x	x			
BRIDGES, Leona	8/5	x	x	x	x			
BRIDGES, Oma	7/28	x	x			x	Rehired 10/20	
BRINES, Zelma	7/17	x	x	x				
BROCK, Ines	7/20	x				x	x	
BROTT, Virginia	10/8	x						
BROWN, Gladys	7/19	x	x	x	x	x		
BROWNING, Billie	7/20	x						
BROWNING, Doris	7/20	x						
BUHRMAN, Nina	8/2	x	x	x	x		S	
BUTLER, Dolores	7/20	x				x	x	
BYRD, Marjorie	7/16	x	x	x	x			
CADDELL, Mary	9/13	x	x	x		x	x	
CAMERON, Harriet	7/31	x	x	x		x	x	
CARRERA, Ensebia	9/13	x			x		Could not work days	
CASSIDY, Beulah	7/20	x			x	x		
CASTINO, Mary	7/28	x	x	x	x	x		
CHAMES, Joanne	7/26	x	x	x	x		Could not work for lack of ride	
CHAPMAN, Alta	8/25	x	x	x	x			
CHAPSON, Louise	7/20	x	x	x	x	x		
CHICANO, Virginia	7/15	x			x	x		
CIROS, Mary	9/8	x	x	x				
CLARK, Ruth	7/17	x	x	x			x	
COATE, Natalie	9/10	x	x					

Name	Date Mired in 1954	Shift	D N	Signed Union Card	Name on Pur-Joined Union List	On Union Committee	Name read on Retention List	Worked on or after 10/19
COATS, Susie	9/28		x x	x				Sick 10/12-10/15 incl.
COFFEY, Marie	7/20		x	x				
COLLINS, Marie	9/28		x				x	Rehired 10/20
CONNERS, Frances	7/20		x			x	x	
COOLEY, Elizabeth	10/11		x					
CRUMP, Gatha	10/11		x	x x				
CUTTRESS, Evelyn	7/20		x	x x	x	x	x	Worked until 10/23
CUTTRESS, Valeria	7/20		x	x x	x	x		
DAHL, Evelyn	9/29		x	x x				
DAVELLO, Clara	8/27		x	x x x	x	x		Sick on 10/15
DAVIS, June	9/10		x					
DEAL, Ruth	8/9		x	x x x	x	x	x	Abs. 10/18-10/23 w/perm iss.
DeWITT, Bettie	9/27		x			x	x	
DICKERSON, Elsie	7/19		x	x x	x	x		Discharged 10/25
DOTY, Esther	7/6		x			x	x	
DRAKE, Frances	7/26		x			x	x	
EDWARDS, Helene	7/22		x					
ELLERS, Myrtis	9/7		x	x x x				
ELLIS, Mary	9/6		x	x x x				
ELMORE, Hazel	9/29		x			x	x	
ELMORE, Jean	6/7		x			x	x	
ELVY, Cora	7/20		x			x	x	
FENTON, Violet	8/30		x	x x				
FISHELSON, Ida	7/20		x			x	x	
FLETCHER, Esther	7/20		x	x x x				
FLOYD, Elsie	9/18		x	x x				
FRANK, Charlotte	7/22		x			x	x	
FREYLING, Delores	7/20		x			x	x	
FREYLING, Marcia	7/22		x				x	Next wrkd 10/22-Quit 11/2 w/f/school
GAITHER, Lula	7/20		x x x	x				
GALE, Maude	7/20		x			x	x	
GARRISON, Fannie	7/15		x	x x				
GEIST, Josephine	10/8		x	x			x	
GESECK, Dorothy	8/31		x			x	x	
GULLEDGE, Daisy	7/15		x		x x	x	x	Sick on 10/15
HACK, Ernestine	7/19		x	x x x	x	x	x	
HALL, Pastoria	7/20		x	x x			x	Rehired 10/18
HANCE, Anna	7/22		x	x x			x	Rehired 10/30
HANSEN, Hazel	9/18		x	x				
HANSON, Ruth	8/18		x	x x				
HARRIS, Mary	8/19		x			x	x	
HARRISON, Lucille	9/29		x	x				
HAYDEN, Rose	9/7		x	x x				
HERRALL, Gail	10/12		x	x				
HOFFSCHNEIDER, Elsie	9/7		x	x				
HOFLAND, Theresa	9/13		x			x		Rehired 10/18
HONTAR, Ellen	8/5		x	x x				
HONTAR, Kathleen	8/5		x	x x				
HOPE, Laura	10/6		x	x				



Name	Date Hired in 1954	Shift	D N	Signed Union Card	Name on Pur/Joined Union List	On Union Committee	Name read on Retention List	Worked on or after 10/19
HOWES, Georgia	8/7	x	x			x	x	
HYDERA, Marie	8/4	x	x x					
JACOBUS, Vita	10/12	x				x	x	
JOHNSON, Irene	8/25	x x x						
JOHNSON, Leonor	7/23	x x x	x					
JOHNSON, Melba	10/9	(x)				x	x	
JONES, Cornelia	10/4	x				x	x	
JONES, Gertrude	7/17	x x x				x	x	
KING, Dolores	9/14	x						
KOUNOVSKY, Evelyn	7/15	x				x	x	
KRUSE, Viola	8/7	x x x x						
LATMAN, Lila	8/6	x x x x						
LEE, Eva	7/20	x x x						
LINDLEY, Beulah	8/10	x x x x						
LINDSAY, Gloria	7/21	x x x x						
LOEFFLER, Sandra	7/28	x			x			
McAFEE, Bernice	7/15	x ?	x	x	x			
McCARL, Edra	9/5	x x						
MCCARTHY, Dora	9/29	x						
MCCULLOUGH, Alice	9/28	x				x		
McDERMOTT, Vita	9/13	x				x x		
McGUILRE, Mary	7/3	x				x	x	
McHUGH, Elizabeth	9/28	x x x						
McPHEE, Eloyce	7/16	x x						
MAHCNEY, Goldie	7/22	x				x	x	
MARGUER, Mary	9/11	x x x						
MAW, Goldie	9/28	x x						
MAY, Mary	8/6	x x x						
MAZZUCCHI, Nancy	9/14	x						
MILLER, Hazel	7/20	x x x						
MIZELL, Barbara	8/31	x			x x			
MONROE, Betty	9/6	x			x			
MORIEN, Norma	10/?	x				x		
MYNOCK, Ada	8/21	x x x						
NAPIER, Renee	10/1	x				x		
NELSON, Irene	8/16	x			x			
NEMET, Elisabeth	7/16	x x x x				x		
NIEMI, Selma	8/31	x x x x x						
NOBLE, Mary	7/20	x			x x			
NUNES, Bernice	7/31	x x x x x						
OFFUTT, Dorothy	7/16	x x x x						
PATE, Gloria	7/15	x x x x x					Terminated 10/13	
PATTERSON, Marian	8/4	x						
PERRY, Catherine	8/2	x				x		
PESONI, Claudina	7/20	x			x x			
PETERSON, Sylvia	7/19	x				x	Quit 11/13 - school	
PIROLLE, Esther	7/21	x x x				x	Could not work days	
*PLOXA, Pauline	9/13	x x						
PONCIA, Anita	7/20	x			x x			



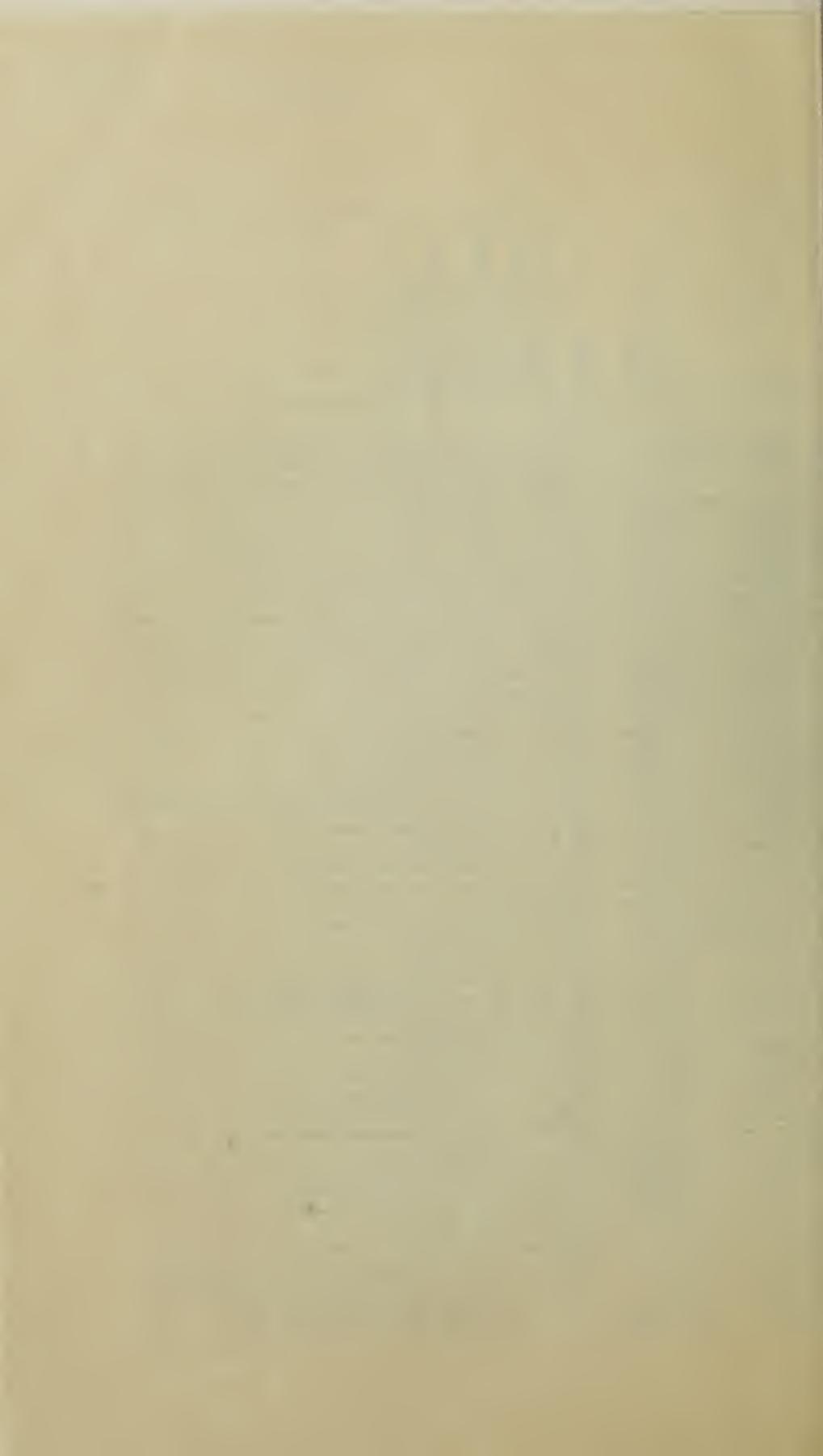
Name	Date Hired in 1964	SHIFT	D N	Signed Union Card	Name on Pur- Joined Union List	On Union Committee	Name read on Retention List	Worked on or after 10/19
POOL, Lorraine	9/22	x	x	x				
*RAWLES, Dora	9/13	x	x		x		Could not work days	
*REARDON, Darlene	10/12	x	x					
*REECE, Gertrude	9/5	x	x	x	x			
RETTELA, Gertrude	7/22	x			x	x		
REYNOLDS, Rosette	7/24	x			x		Quit on 10/18	
ROCCA, Pauline	9/28	x	x	x				
ROSS, Aloa Rae	10/2	x	x					
ROW, Julia Ann	7/22	x	x				x Sick 2 weeks-rehired 10/28	
RUFINO, Margaret	7/20	x	x	x				
RUNYON, Lillian	9/3	x						
RUSSELL, Mary	7/24	x	x	x				
SCHIFFLER, Marie	7/16	x	x	x				
SCHOENTHAL, Elizabeth	7/17	x	x	x	x	x	Cut-Indus. Accident-rehired 11/8	
SCHRUM, Evelyn	8/23	x						
SCOTT, Gertrude	8/24	x	x	x				
SCOTT, Merle	7/22	x						
SEIDEL, Mary	9/13	x						
SHIRLES, Viteria	7/16	x	x	x				
SMITH, Jessie	9/17	x			x		Did not work bet. 10/15 & 10/2	
SMOKER, Helen	7/20	x			x	x		
SOUZA, Mathilda	9/27	x						
SUSOEF, Ruth	7/19	x			x	x		
SWENINGSON, Amy	10/5	x	x					
TABER, Marion	9/1	x						
*TATUM, Nancy	10/12	x	x					
THORNTON, Lois	10/5	x	x	x				
THORP, Ilah	7/20	x			x	x		
TRIPP, Marie	9/10	x	x					
URTON, Etta	7/20	x	x	x	x		Rehired 10/18	
VEACH, Shirley	7/21	x			x	x		
VERNON, Amy	9/13	x	x	x				
VESSELS, Stella	9/17	x			x		Rehired 10/19	
VOGEL, Anna	7/15	x	x	x				
WAKELAND, Geneva	7/20	x			x	x		
WASIN, Edyth	8/9	x	x			x	Rehired 10/18	
WILDER, Louise	9/14	x	x	x				
WILSON, Edith	7/27	x				x		
ZIEGENBEIN, Thelma	7/21	x			x	x		
ZIMPFER, Patricia	10/6	x			x		Could not work days	

S-sick on and after 10/19

* Union card signed at place of employment before hire by Respondent.

MEN

Name	Date Hired in 1954	Shift	Signed Union Card	Name on Purloined Union List	On Union Committee	Name Read on Retention List	Worked on or after 10/19
			D	N			
LIMAN, Lyman	9/1		x				
DERSON, William (P)	9/9		x		x	x	
JUSTIN, Willy	7/23	x x			x		
TE, John	9/14		x				
MEIT, Laurie	7/14		x		x	x	
TONI, Joe	9/28		x			x	
EWER, Richard	9/28		x				
RGER, George	9/21	x					
APMAN, Orland (P)	7/1/53	x			x	x	
ICANO, Salvador	7/19	x			x	x	
FEY, John	7/19	x x					
PFOCK, Irvin	6/21	x			x	x	
REIA, Frank	7/1/53	x			x	x	
ONNOVER, Lee	8/30	x			x	x	
RDEN, David	7/29	x					
VIS, George	9/27	x					
VILBISS, Robert	7/19	x			x		
NNER, George	7/20	x			x	x	
NCAN, Worthy	9/24	x					
MORE, Eugene	7/17	x		x	x	Did not work bet. 10/10 & 10/23	
LORNI, Adolfo	8/16	x			x	x	
STA, Enrico	8/16	x			x	x	
STER, Herman	7/20	x			x	x	
STER, William	9/23	x					
IBOURGHOUSE, Ernest	7/13	x x					
RCIA, Jose	3/29	x x x		x	x		
LLEDGE, Alvin Martin	7/20	x			x	x	
LLEDGE, Lonzo	5/1/53	x			x	x	
LL, Sidney	8/31	x			x	x	
FLIN, Arthur	10/4	x x			x	Rehired 10/20	
GGENS, Edward	9/1/53	x		x	x	In Military Service on 10/19	
MINEZ, John	12/8	x			x	x	
JENSON, Raymond (P)	7/21	x			x	x	
JENSON, Willie	9/13	x			x	x	
NGERS, Oscar	7/20	x			x	x	
ELLEHER, Gerald	8/27	x				Quit 10/18	
EE, Leonard	7/23	x x	x				
EE, Robert	6/28	x			x	x	
EWIS, Victor (P)	9/4/53	x			x	x	
OEFFLER, Carl	7/15	x		x		Quit 10/18	
SCALL, Harry	9/29	x					
ARRA, Alvin	7/21	x					
ASOUKA, Frank	7/8	x			x	x	
ILLS, Lloyd (P)	10/11	x			x		
ARRON, Henry	7/8	x			x		
ANDASON, Andy (P)	5/24	x			x	x	
ANELLI, Ray (P)	7/13/53	x x x		x	x	x	Discharged 10/20
APER, Oliver	4/19	x			x	x	



DC-(SI)-3/8

Name	Date Hired in 1954	Shift	D	N	Signed Union Card	Name on Purloined Union List	On Union Committee	Name read on Retention List	Worked on or after 10/19
PHILLIPS, Richard	9/24		x	x					
POOGI, Joseph Jr. (P)	4/19		x				x	x	
POZZI, Charles	9/27		x						
RAHM, Albert	6/21		x	x	x				
REYNOLLS, Richard	8/11		x	x	x				
RODRIGUES, Edward	7/14		x				x	x	
ROGERS, Gerald	9/29		x						
SMITH, Joyce	7/17		x						
SMITH, Wayne	8/7		x	x			x	x	
SMODGRASS, Robert (P)	5/10		x				x	x	
STOREY, Clarence	7/15		x	x	x	x			
SWENINGSON, Rudolph	10/5		x	x					
TALLMAN, Lester (P)	1952		x				x	x	
TODD, Gerald	8/21		x				x	x	
TSURUMOTO, George (P)	7/15/53		x				x	x	
UNCILANO, Froilan	8/24		x						
WEARE, William	7/20		x						
WOOD, Robert	7/20		x				x	x	
TEAGER, Kenneth	19/2		x				x	x	

(P) Hired as more or less permanent employees for year around work.

APPENDIX B

DAY SHIFT

Women

Allen, Marceline. Ameral, Lina. Ames, Nora.
Anderson, Caroline. Angle, Marvel. Antone, Eva.
Awender, Karolina. Azevedo, Virginia.

Bridges, Leona. Bridges, Oma. Brines, Zelma.
Buhrman, Nina. Byrd, Marjorie. Cihos, Mary.
Clarke, Ruth. Coate, Natalie. Coffey, Marie. Collins, Marie. Crump, Gatha.

Dahl, Evelyn. Eilers, Myrtis. Ellis, Mary. Fenton, Violet. Floyd, Elsie. Freyling, Marcia. Garrison, Fannie. Hall, Pastoria. Hance, Anna. Hanson, Hazel. Herrall, Gail. Harrison, Lucille. Hayden, Rose. Hope, Laura. Hydera, Marie.

Johnson, Lenor. Kruse, Viola. Layman, Lila. Lee, Eva. Lindley, Beulah. Lindsay, Gloria. McCarl, Edna. McCarthy, Dora. McCullough, Alice. McHugh, Elizabeth. McPhee, Eloyce. Marguez, Mary. Maw, Goldie. May, Mary. Miller, Hazel. Mynock, Ada.

Nelson, Irene. Offutt, Dorothy. Pool, Lorraine. Reardon, Darlene. Rocca, Pauline. Ross, Aloa. Russell, Mary. Scheffler, Marie. Scott, Gertrude. Shields, Viteria. Smith, Jessie. Swenington, Amy.

Tatum, Nancy. Thornton, Lois. Tripp, Marie. Urton, Etta. Vernon, Amy. Vessels, Stella. Vogel, Anna. Wasin, Edyth. Wilder, Louise.

Men

Berger, George. Coffey, John. Davis, George.

DeVilbiss, Robert. Duncan, Worthy. Fribourghouse, Ernest. Heflin, Arthur.

Lee, Leonard. Mills, Lloyd. Phillips, Richard. Storey, Clarence. Swenington, Rudolph. Unciano, Froilan. Weare, William.

NIGHT SHIFT

Women

Albertoni, Ruth. Antone, Bertha. Baker, Bonnie. Bate, Erma. Blair, Ethel. Brickner, Bessie. Brott, Virginia. Browning, Billie. Browning, Doris. Carrera, Ensebia. Coats, Susie. Cooley, Elizabeth.

Davis, June. Edwards, Helene. Fletcher, Esther. Gaither, Lula. Hanson, Ruth. Hoffschneider, Elsie. Hofland, Theresa. Hontar, Ellen. Hontar, Kathleen.

Johnson, Irene. King, Dolores. Mazzuechi, Nancy. Morien, Norma. Napier, Renee. Nunes, Bernice. Patterson, Marian. Perry, Catherine. Peterson, Sylvia. Pirolle, Esther. Ploxa, Pauline.

Rawles, Dora. Row, Julia. Rufino, Margaret. Runyon, Lillian. Schrum, Evelyn. Scott, Merle. Seidel, Mary. Souza, Mathilda. Taber, Marion. Wilson, Edith.

The following, all on the retention list, are excluded from this Appendix for reasons shown:

1. Betty Monroe—Although added to complaint on motion by General Counsel, no evidence was adduced that she could not work days.

2. Josephine Geist—No evidence that she could not work days although she is named in amendment to complaint.

3. Patricia Zimpher—Not named in complaint, although there is evidence that she could not work days.

Men

Allman, Lyman. Augustin, Willie. Bate, John. Bertoni, Joe. Breuer, Richard. Darden, David. Foster, William. Kelleher, Gerald.

McCall, Harry. Marra, Alvin. Narron, Henry. Pozzi, Charles. Rahm, Albert. Reynolds, Richard. Rogers, Gerald. Smith, Joyce.

The following men named in the complaint are excluded from this appendix for the reasons shown: Fay Neel was not employed by the Respondent between July 31 and October 15, 1954; so, instead of being laid off, he was just rehired at the time of the layoff. Alvin Gulledge was identified as the same person as Martin Gulledge, whose name was on the retention list and who continued to work on the day shift. His name was stricken from the complaint on motion by the General Counsel.

APPENDIX C

Notice to All Employees Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not discourage membership in General Truck Drivers, Warehousemen and Helpers Union, Local No. 980, AFL-CIO, or any other labor organization of our employees by discharging, laying off,

refusing to re-employ, or in any other manner discriminating in regard to the hire, tenure of employment, or any other term or condition thereof, of any of our employees or any applicant for employment.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist General Truck Drivers, Warehousemen and Helpers Union, Local No. 980, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by a valid agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

We Will make whole the following employees for any loss suffered as a result of the discrimination against them:

1. Orice Storey.
2. Gloria Pate DeFont.
3. Elsie Dickerson.
4. All employees named in Appendix B of the Intermediate Report of the Trial Examiner, a copy of which is attached hereto and made a part hereof.

All our employees are free to become or remain members of the above-named labor organization, or any other labor organization, or to refrain from

such membership except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership or nonmembership in or activity on behalf of any such labor organization.

Dated

Sebastopol Apple Growers Union.

By

(Representative) (Title).

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Causes.]

**MOTION BY CHARGING PARTY TO REOPEN
THE RECORD AND FOR WITHDRAWAL
OF CHARGE, OR IN THE ALTERNATIVE
TO DISMISS THE COMPLAINT**

Now comes the Charging Party above named, General Truck Drivers, Warehousemen and Helpers Union, Local No. 980, by its attorneys, Tobriner, Lazarus, Brundage & Neyhart, and moves the Board to reopen the record herein for the purpose of permitting the Charging Party to withdraw the Charge, or in the alternative to permit the Charging Party

to move to dismiss the Complaint, or in the further alternative the Charging Party moves the Board to permit it to withdraw the charge without reopening the record for the following reasons:

1. The Complaint alleges inter alia that the Respondent, on October 15, 1954, discriminatorily laid off a number of employees whose names are set forth in the appendix to the Complaint, and at various dates discriminatorily discharged three individuals named in the Complaint, and also engaged in acts of interference with the employees' rights under the Act.
2. That the Complaint alleges that the purpose of the alleged discriminatory layoff was to interfere with and affect the results of a representation election held on October 19, 1954, about four days after the layoff.
3. That recently and since the hearing was closed in this matter, the Charging Party and the Respondent have reached an agreement under and whereby Respondent has recognized the Charging Party as the collective bargaining agent for the employees of Respondent, and therefore it will not be necessary to count the challenged ballots of the employees involved in the layoff or to have a certification from the Board.
4. That the Charging Party and Respondent have also agreed that the individuals named as alleged discriminatees in "Appendix A" of the Complaint and the three individuals alleged as having

been discriminatorily discharged shall be placed upon a preferential hiring list except for a certain number of individuals whose principal employment during the 1954 processing season was at canneries other than Respondent and one individual alleged to have been laid off who completed the 1954 season and worked part of the 1955 season until she quit; that such individuals on such preferential hiring list are to be given notice when Respondent first begins accepting applications for the processing season in 1956 of the fact that employment is available to them and of their right to apply for such employment within one week of such notification.

5. That the Charging Party and Respondent have also agreed that the Charging Party will obtain waivers from all of the alleged discriminatees with respect to any claims for possible back pay; that there is a serious question as to whether any of the alleged discriminatees are, in fact, entitled to back pay and if so the amounts to which they may be individually entitled are so small as not to warrant further expenditure of time and money for the purpose of determining the amounts, if any, to which they might be entitled.

6. That the foregoing agreement and arrangement between the Charging Party and the Respondent will and does effectuate the policies of the Act which has as its underlying purpose the stabilization of labor relations and that such arrangements, agreements, procedures and methods of resolving the dispute and the alleged unfair labor practices

are compatible with any possible remedy which the Board might possibly order.

7. That no good purpose would be served and the national policy, as set forth by Congress in the Act, will not be fulfilled if this proceeding continues with the attendant consumption of time through further protracted litigation and the possible filing of exceptions.

Wherefore, the Charging Party respectfully requests that:

(1) The record herein be reopened for the purpose of permitting it to make the aforesaid motions to withdraw the charge or, in the alternative, to dismiss the Complaint; or

(2) in the further alternative that the Board grant the Charging Party's motion herein to withdraw the charge.

Dated: March 9, 1956 at San Francisco, Calif.

Respectfully submitted,

GENERAL TRUCK DRIVERS, WAREHOUSE-MEN AND HELPERS UNION, LOCAL NO. 980, I.B.T.C.W. & H. OF AMERICA, AFL,

By TOBRINER, LAZARUS, BRUNNAGE & NEYHART,

/s/ By STANLEY NEYHART,
Its Attorneys.

Respondent, by its counsel, Severson, Davis &

Larson and Nathan R. Berke, hereby joins and concurs in the foregoing Motion.

Respectfully submitted,

SEBASTOPOL APPLE GROWERS
UNION,

SEVERSON, DAVIS & LARSON,

/s/ By NATHAN R. BERKE,
Its Attorneys.

[Title of Board and Causes.]

ERRATUM

On page 23, line 10 of Intermediate Report in the above-entitled case, after night shift and before which was, insert the following, which was omitted from the stencil:

as early as possible, Manager Martini gave instructions for the supervisors to make a selection of employees for retention on the single shift.

Dated this 19th day of March, 1956.

/s/ JAMES R. HEMINGWAY,
Trial Examiner.

[Title of Board and Causes.]

ORDER

An Intermediate Report having issued in this proceeding on March 7, 1956, in which the Trial

Examiner found certain unfair labor practices and recommended a remedy, the Charging Party having filed a motion to reopen the record to permit withdrawal of the charge or to dismiss the complaint because of an agreement between the Charging Party and the Respondent, the General Counsel having filed opposition to the motion, and the Board having reconsidered the matter,

It Is Hereby Ordered that the motion be, and it hereby is, denied because it does not appear that it will effectuate the policies of the Act to close the case on the basis outlined in the motion.

Dated, Washington, D. C., April 11, 1956.

By direction of the Board:

FRANK M. KLEILER,
Executive Secretary.

[Title of Board and Causes.]

ANSWER OF CHARGING PARTY TO OPPOSITION OF COUNSEL FOR GENERAL COUNSEL TO MOTION TO REOPEN THE RECORD AND FOR WITHDRAWAL OF CHARGE, OR, IN THE ALTERNATIVE, TO DISMISS THE COMPLAINT

Opposition of the General Counsel to the above-described motion of the charging party having heretofore been filed and served upon charging party, charging party hereby answers said opposition in the following respects:

1. Counsel for General Counsel alleges the agreement between the charging party and the respondent for preferential hiring does not fulfill the requirements of the Act, "that to remedy the unfair labor practices so found, the employees so discriminated against be made whole and all employees be assured of the rights guaranteed them in the Act by the posting of appropriate notices."

The agreement does fulfill the requirements of the Act in that the alleged discriminatees are to be placed upon a preferential hiring list and rehired by the charged employer. The basic objective of the charging party in this dispute was to obtain reinstatement of the alleged discriminatees in order to enable them to continue to work in their jobs. This objective, coupled with the demand for recognition based upon the majority representation of the union, was indeed the reason and purpose of a long, bitter and difficult strike. To contend that the requirements of the Act are not fulfilled because employees are not "made whole," and to fasten upon possible back pay as the prime issue in this instance is to distort the purpose of the Act and the sought objectives of the charging party undertaken to effectuate the Act.

The charging party, through the expenditure of great efforts and sums, has made possible the accomplishment of these objectives. It has brought about the preferential hiring of those very employees for whom it filed charges. It has brought about the recognition of the union as the bargaining

agency. It has brought about the recognition of the rights guaranteed to the employees by the Act. The charging party accomplished these objectives only over a period of time extending from October, 1954 to April, 1956. At this late date, it is unfortunate that the process of the Board, so long continued without result, should be invoked in a manner to prevent the conclusion of this dispute. It is particularly ill-advised that this interposition of the Board occur at a time when the canning season of 1956 will soon commence so that the rights of the employees will again be undetermined during another season. Nor is there any certainty that such a situation will not continue for a long period of time, thereby negating the accomplishments of the charging party in bringing about a solution of this problem.

We respectfully submit that the purpose of the Act can be defeated by insistence upon secondary and ancillary procedures which do not touch the basic problem: the employment of these cannery workers.

To the extent that the General Counsel complains of the fact that the settlement does not provide the employees be assured of the rights guaranteed them in the Act by the posting of appropriate notices, the charging party submits that the employees are now well informed that the rights guaranteed them in the Act have been recognized. The settlement agreement has had the most wide-spread publicity not only in the Sebastopol area, but throughout the state of California. Each of the involved employees

has been informed and assured that his employment rights are now protected. The employer has recognized that it must not engage in the future in unfair labor practices.

Furthermore, the charging party is informed and believes, and upon such information and belief alleges, that the employer would have no objection to the posting of appropriate notices to the extent that it recognizes the union, that it will grant preferential rehiring to the employees involved, that it will not engage in the future in unfair labor practices and will otherwise abide by, and conform to, the settlement agreement. Under such circumstances, it is straining at a minor provision of the Act to attempt to upset an all-important settlement agreement because formal appropriate notices have not been posted.

2. The General Counsel alleges that the "facts indicate that the amount of back pay to which these employees would be entitled constitutes a substantial sum of money." The allegation of counsel is conjecture only. In the first instance, many of the involved employees have waived their rights to any back pay since obviously such employees were far more interested in immediate employment than speculative back pay which could be obtained only after years of litigation. In the second instance, the number of employees who would be in a position to collect back pay is conjectural, since the charging party's records show that over one-half of such individuals have left the area and cannot be located.

In the third instance, it is unknown to what extent such employees may have obtained other employment, which would reduce the interim earnings. In the fourth instance, the only objection which has been made of any kind or nature emanates from a small group of less than eight employees, who for their own political purposes within the union and pique, seek to embarrass it.

3. Counsel alleges that the mere fact that respondent has granted recognition and a contract to the charging party is not justification for depriving employees of back pay and the assurance through posting of appropriate notices that unfair labor practices would not be repeated.

As to the deprivation of back pay, we submit that the deprivation of jobs as above set forth is far more important. As to the assurance of rights through the posting of notices, we submit as above set forth, that appropriate notices may be posted by the employer as above alleged, and that in any event, such posting is formal and procedural only.

We submit that the charging party has been vitally and primarily concerned in this issue and would not undertake any settlement that it was not positive would effectuate the purposes of the Act. Collective bargaining has been established; industrial strife has been ended. Peaceful procedures for preventing interference by the employer with the legitimate rights of the employees have been set up. These are the basic purposes of the Act. This collective bargaining contract is the first in the history

of this area. It was consummated only after tremendous effort and sacrifice.

The charging party appreciates that the Board has attempted to effectuate the policies of the Act, but it must point out that the necessarily slow procedures involved did not effectuate these basic purposes until such time as the charging party itself brought about their fulfillment. The charging party submits in all sincerity that it does not now lie with the General Counsel to attempt to impair the industrial peace which the charging party has finally achieved.

Dated at San Francisco, California, this 13th day of April, 1956.

TOBRINER, LAZARUS,
BRUNDAGE & NEYHART,
/s/ By MATHEW O. TOBRINER,
Attorneys for Charging Party.

[Title of Board and Causes.]

MOTION TO RECONSIDER, MODIFY OR SET
ASIDE ORDER OF BOARD

The Board having heretofore issued its Order that the Motion to Reopen the Record for the Withdrawal of Charge, or, in the Alternative, to Dismiss the Complaint in the above-entitled matter be denied, such order being dated April 11, 1956, and opposition of General Counsel to the above described Motion having been filed, the Answer of the

Charging Party to said opposition having been filed, Charging Party hereby requests that the matter be reconsidered; that the Order be modified or set aside for the following reasons:

1. Charging Party filed an Answer to the opposition of Counsel, but it is evident that the Answer and the Order of the Board crossed in the mail.
2. The allegations of the Answer of the Charging Party to the opposition of the General Counsel should be considered by the Board and weighed by it in order that the matter be properly resolved.
3. For the additional reasons stated in the Answer we request that the Motion to Reopen the Record and for the Withdrawal of the Charge, or in the Alternative, to Dismiss the Complaint, be granted.

Dated at San Francisco, California, this 20th day of April, 1956.

Respectfully submitted.

TOBRINER, LAZARUS,
BRUNDAGE & NEYHART,
/s/ By MATHEW O. TOBRINER,
Attorneys for Charging Party.

United States of America

Before the National Labor Relations Board

Case No. 20-CA-1035

**SEBASTOPOL APPLE GROWERS UNION and
GENERAL TRUCK DRIVERS, WARE-
HOUSEMEN AND HELPERS UNION,
LOCAL No. 980, AFL-CIO.**

Case No. 20-RC-2637

**SEBASTOPOL APPLE GROWERS UNION,
Employer, and GENERAL TRUCK DRIV-
ERS, WAREHOUSEMEN AND HELPERS
UNION, LOCAL No. 980, AFL-CIO, Peti-
tioner.**

DECISION AND ORDER

On March 7, 1956, Trial Examiner James R. Hemingway issued his Intermediate Report in the above-entitled proceedings, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Intermediate Report also embodied the Trial Examiner's findings with respect to the representation case. Thereafter, the Respondent filed exceptions and a supporting brief.

The Board¹ has reviewed the rulings of the Trial

¹ Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, the supporting brief, and the entire record in this case, and adopts the Trial Examiner's findings,² conclusions, and recommendations.

1. The Respondent alleges bias and prejudice on the part of the Trial Examiner. We have carefully scrutinized the entire record and find no support for these allegations.
2. On June 7, 1957, the Respondent and the Union jointly requested permission for withdrawal of the pending representation case on the ground that for the past 2 years, a collective bargaining agreement has been in effect between them and that no further issues exist with respect to that case. We shall grant the request.

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations

² We note the following inadvertencies in the Intermediate Report, which, however, do not affect the Trial Examiner's conclusions or our agreement with them. The Intermediate Report states at one point that many union advocates were known to the Respondent before October 14, 1955; the date should be October 14, 1954. At footnote 42, the Trial Examiner states the Respondent's inventory as of June 30, 1952; this date should be June 30, 1954. Further, in the same footnote there is reference to a difference of 39,970 cases; the figure should be 39,770.

Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Sebastopol Apple Growers Union, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

- (a) Discouraging membership in General Truck Drivers, Warehousemen and Helpers Union, Local No. 980, AFL-CIO, or any other labor organization of its employees by discriminating in regard to their hire or tenure of employment or any term or condition of employment; and
- (b) Requiring applicants for employment to answer any question concerning their union membership; and
- (c) By threats of reprisal, unlawful interrogation, or in any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join or assist the aforesaid labor organization or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

- (a) Make whole Orice Storey, Gloria Pate De Font, Elsie Dickerson, and each of the employees whose names are listed in Appendix B attached to the Intermediate Report for any loss they may have suffered as a result of the Respondent's discrimination against them, in the manner set forth in the section of the Intermediate Report entitled "The remedy";
- (b) Preserve and make available to the Board or its agents, upon request, for examination or copying, all personnel payroll records, time cards, social security payment records, employees' income tax report records, and all other records and reports necessary to analyze the amount of back pay due under the terms of this Order;
- (c) Post at its plant at Sebastopol, California, copies of the notice³ attached to the Intermediate Report and marked Appendix C, to which shall be attached copies of the list attached to the Intermediate Report and marked Appendix B. Copies of such notice and list to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by an authorized representative

³ This notice, however, shall be and it hereby is amended by striking from the first paragraph thereof the words "Recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals Enforcing an Order."

of the Respondent, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices and lists are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Twentieth Region, in writing, within ten (10) days from the date of this Order of what steps the Respondent has taken to comply herewith.

It Is Further Ordered that the joint request of the Petitioner and Employer to withdraw the petition in Case No. 20-RC-2637 be, and it hereby is, granted.

Dated, Washington, D. C., August 27, 1957.

BOYD LEEDOM, Chairman,
ABE MURDOCK, Member,
STEPHEN S. BEAN, Member,
[Seal] NATIONAL LABOR RELATIONS
BOARD.

United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

SEBASTOPOL APPLE GROWERS UNION,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before the Board and known upon its records as Case Nos. 20-CA-1035 and 20-RC-2637, respectively.

Fully enumerated, said documents attached hereto are as follows:

1. Stenographic transcript of testimony taken before Trial Examiner James R. Hemingway on July 19, 20, 21, 22, 25, 26, 27, 28, August 3, 14, 15, 29, September 8, 9, 12, 13, 14, 15, 16, 21, 22, 23, October 12, 13, 14, 15 and 17, 1955, together with all exhibits introduced in evidence and rejected exhibits.

2. General Counsel's letter dated November 18,

1955 moving to reopen the record for the purpose of introducing in evidence certain letters.

3. Respondent's letter dated November 21, 1955, opposing General Counsel's motion to reopen the record.
4. Copy of Trial Examiner's ruling denying General Counsel's motion to reopen the record, dated November 28, 1955.
5. Copy of Trial Examiner's notice of intention to correct transcript of testimony, dated December 6, 1955.
6. Copy of Trial Examiner's ruling on Respondent's objection to proposed corrections and order correcting transcript of testimony, dated February 29, 1956.
7. Copy of Trial Examiner's Intermediate Report and Recommended Order, dated March 7, 1956, (annexed to item 17 hereof).
8. Joint Motion of General Truck Drivers, Warehousemen & Helpers Union, Local 980, AFL-CIO (hereinafter called Charging Party) and Respondent to reopen the record and for withdrawal of charge, or, in the alternative, to dismiss the complaint, dated March 9, 1956.
9. Copy of Trial Examiner Hemingway's erratum dated March 19, 1956.
10. Copy of General Counsel's opposition to joint motion of Charging Party and Respondent to reopen the record and for withdrawal of charge,

or, in the alternative, to dismiss the complaint, dated March 22, 1956.

11. Copy of Board's order denying Charging Party's motion to reopen the record to permit withdrawal of charge, or, in the alternative, to dismiss the complaint, dated April 11, 1956.

12. Charging Party's answer to General Counsel's opposition to Charging Party's motion to reopen the record and for withdrawal of charge, or, in the alternative, to dismiss the complaint, dated April 13, 1956.

13. Charging Party's motion to reconsider, modify or set aside order of Board, dated April 20, 1956.

14. Respondent's letter, dated April 23, 1956, joining in the Charging Party's motion to reconsider, modify or set aside order of Board.

15. Copy of Board's order denying Charging Party's motion to reopen the record to permit withdrawal of the charge, or to dismiss the complaint, dated May 3, 1956.

16. Copy of Respondent's exceptions to Intermediate Report and Recommended Order received May 28, 1956.

17. Copy of Decision and Order issued by the National Labor Relations Board on August 27, 1957, with Intermediate Report and Recommended Order annexed.

In Testimony Whereof, the Executive Secretary

of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 25th day of July, 1958.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary, National
Labor Relations Board.

[Endorsed]: No. 16117. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Sebastopol Apple Growers Union, Respondent. Transcript of Record. Petition for Enforcement of an Order of the National Labor Relations Board.

Filed: August 4, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 16117

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

SEBASTOPOL APPLE GROWERS UNION,
Respondent.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR
RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, et seq.), respectfully petitions this Court for the enforcement of its Order against Respondent, Sebastopol Apple Growers Union, its officers, agents, successors, and assigns. The consolidated proceeding resulting in said Order is known upon the records of the Board as "Sebastopol Apple Growers Union and General Truck Drivers, Warehousemen and Helpers Union, Local No. 980, AFL-CIO," Case No. 20-CA-1035; and "Sebastopol Apple Growers Union Employer and General Truck Drivers, Warehousemen and Helpers Union, Local No. 980, AFL-CIO Petitioner," Case No. 20-RC-2637.

In support of this petition the Board respectfully shows:

(1) Respondent is a California corporation engaged in business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on August 27, 1957, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, its officers, agents, successors, and assigns. On the same date, the Board's decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the consolidated proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the pro-

ceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing those portions of the Board's said order which relate specifically to the Respondent herein, and requiring Respondent, its officers, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 25th day of July, 1958.

/s/ THOMAS J. McDERMOTT,
Associate General Counsel, Na-
tional Labor Relations Board.

[Endorsed]: Filed July 28, 1958. Paul P. O'Brien,
Clerk.

[Title of Court of Appeals and Cause.]

**STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY**

In this proceeding petitioner National Labor Relations Board will rely upon the following points:

1. Substantial evidence on the record considered as a whole supports the Board's conclusion that respondent interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act.
2. Substantial evidence on the record considered as a whole supports the Board's conclusion that

respondent discriminatorily discharged certain of its employees in violation of Section 8 (a) (3) and (1) of the Act.

Dated at Washington, D. C., this 25th day of July, 1958.

MARCEL MALLET-PREVOST,
Assistant General Counsel, Na-
tional Labor Relations Board.

[Endorsed]: Filed July 28, 1958. Paul P. O'Brien,
Clerk.

[Title of Court of Appeals and Cause.]

**ANSWER TO PETITION FOR
ENFORCEMENT**

Comes now respondent, Sebastopol Apple Growers Union, and for its answer to the petition for enforcement herein admits, denies and avers as follows:

I.

Respondent admits it is a California corporation engaged in business in the State of California, which is within this judicial circuit but denies that it committed any unfair labor practices.

II.

Answering paragraph (2), respondent admits that proceedings were had before the petitioner in the matter referred to in the petition and that on August 27, 1957, petitioner issued and served an Order

upon respondent. Respondent denies that petitioner acted upon due proceedings and denies that petitioner duly stated its findings of fact and conclusions of law; respondent avers that the findings of petitioner are not supported by substantial evidence on the record considered as a whole and are contrary to the evidence; that the conclusions that respondent violated Section 8(a)(1) and (3) of the Act are not supported by lawful findings or any findings and are contrary to Sections 7, 8, 9 and 10 of the Act; that the procedure used by petitioner was unfair and denied respondent due process of law in that evidence that should have been excluded was admitted, in that relevant and material evidence that was offered was denied admission, in that petitioner admitted into and considered as evidence a written statement that was improperly obtained in violation of law, and in that the joint motion of respondent and charging party to reopen the record and for withdrawal of the charge, or, in the alternative, to dismiss the complaint was denied by petitioner contrary to law, arbitrarily, and without a fair hearing or any hearing; respondent further avers that the Order of petitioner referred to in said paragraph (2) is not supported by any lawful findings of fact or conclusions of law, and that said Order requires affirmative action that violates the Act and that will not and does not effectuate the purposes of the Act.

III.

Answering paragraph (3), respondent avers that

it has no information or belief on the subject sufficient to enable it to answer the allegations contained therein, and placing its denial on said ground, denies each and every such allegation.

Wherefore, respondent prays that this Honorable Court enter a decree denying the petition and refusing to enforce the Order of petitioner and that such Order be set aside in its entirety, or alternatively, that the Order be modified in the respects the same may be found to be improper, and for such other and further relief as to this Honorable Court may seem meet in the premises.

Dated: September 18, 1958.

NATHAN R. BERKE,
SEVERSON, DAVIS
& LARSON,
/s/ By NATHAN R. BERKE,
Attorneys for Respondent.

Certificate of Service Attached.

[Endorsed]: Filed September 19, 1958. Paul P.
O'Brien, Clerk.

Before the National Labor Relations Board
Twentieth Region

Case No. 20-CA-1035

In the Matter of: Sebastopol Apple Growers Union
and General Truck Drivers, Warehousemen
and Helpers Union, Local No. 980, AFL.

Case No. 20-RC-2637

In the Matter of: Sebastopol Apple Growers Union,
Employer, and General Truck Drivers, Ware-
housemen and Helpers Union, Local No. 980,
I.B.T.C.W. & H. of America, AFL, Petitioner.

TRANSCRIPT OF PROCEEDINGS

Courtroom No. 3, Sonoma County Court House,
Santa Rosa, California, Tuesday, July 19, 1955.

Pursuant to notice, the above-entitled matter
came on for hearing at 10 o'clock, a.m.

Before: James R. Hemingway, Esq., Trial Ex-
aminer.

Appearances: David Karasick and Robert Magor,
Esqs., 630 Sansome Street, San Francisco, California,
appearing on behalf of the General Counsel,
National Labor Relations Board. Messrs. Severson,
McCallum & Davis, by Nathan R. Berke, Esq., 38
Sansome Street, San Francisco 4, California, ap-
pearing on behalf of Sebastopol Apple Growers
Union, the Respondent. W. M. Caldwell, 405 Mont-
gomery Street, San Francisco, California, appear-

ing on behalf of Sebastopol Apple Growers Union,
the Respondent. [2]*

* * * * *

Mr. Karasick: I call Mr. Roy Rhodes.

ROY A. RHODES

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [45]

Direct Examination

* * * * *

Q. (By Mr. Karasick): Mr. Rhodes, by whom are you employed?

A. By the General Truck Drivers' Local 980.

Q. And what is your position with that union?

A. Secretary-Treasurer and Business Manager.

Q. How long have you held that position?

A. Since 19—January the 13th, 1948, I believe.

* * * * *

Q. Do you know Mr. Elmo Martini?

A. Yes, I do.

Q. Did you ever have a conversation with Mr. Martini last year with respect to the employees of the plant over which he is Manager, Sebastopol Apple Growers Union? A. Yes, I did.

Q. And when did that conversation take place?

A. Well, as near as I can recollect, on or about the 28th of July, I believe.

Trial Examiner: 1954?

The Witness: Right.

* Page numbers appearing at top of page of Reporter's Transcript of Record.

(Testimony of Roy A. Rhodes.)

Mr. Karasick: May I leave this 1954 calendar for the availability of the witness should he wish it? Any objection, Counsel?

Mr. Berke: No.

Mr. Karasick: Thank you.

Q. (By Mr. Karasick): Where did you see Mr. Martini?

A. At his office at the Sagu Plant.

Trial Examiner: How do you spell that?

The Witness: Well, it's the Molino Plant but they call it the Sagu Plant.

Mr. Karasick: May I say that is an abbreviation of Sebastopol Apple Growers Union, the beginning initials of each of those names.

Q. (By Mr. Karasick): Is Sagu what they generally refer to [47] the Respondent as around this area? A. That's right, yes.

Q. Now, will you tell us who was present with you, if anyone, when you saw Mr. Martini?

A. Mr. Bertolucci.

Q. And what is his first name?

A. Angelo A. Bertolucci. I don't know what his middle name is.

* * * * *

Q. (By Mr. Karasick): Did Mr. Bertolucci at that time have any connection with the Union?

A. Yes, he was the President of the Local.

Q. And had been for some time past?

A. That's right.

Q. Anyone else present besides you, Mr. Bertolucci, and Mr. Martini during this conversation?

(Testimony of Roy A. Rhodes.)

A. No one from the Union, no.

Q. Well, was there anyone else present?

A. Just an office girl, a receptionist as you go in the office. [48]

Q. This is in the office? A. That's right.

Q. Tell us what occurred and what was said and by whom on that occasion.

A. Well, we went in and asked for Mr. Martini—

Trial Examiner: Who is "we"?

The Witness: Mr. Bertolucci and myself.

Trial Examiner: All right.

A. (Continuing) —and the office girl said he's busy in the back. She called him and he came on out to the front office. Am I going too fast?

Trial Examiner: No, go ahead.

The Witness: You want—

Q. (By Mr. Karasick): What was the conversation now?

A. Well, I'd rather not use the exact words that he said when he met us at the door.

Trial Examiner: Well, if you remember them, why, you may use them.

The Witness: Well, the language wasn't any too good.

Mr. Berke: Well, I will move that be stricken.

Mr. Karasick: I consent to that. All I am interested in is what the sum and substance of the conversation was.

Q. (By Mr. Karasick): Mr. Martini addressed

(Testimony of Roy A. Rhodes.)

some remarks to you and then you had some business to transact?

Mr. Berke: Wait a minute, wait a minute. I will object to that examination, until we have who said what. [49]

Mr. Karasick: All right. Never mind. I will withdraw the question.

Q. (By Mr. Karasick): To your best recollection, Mr. Rhodes, tell us, as Mr. Berke expressed it, who said what, as well as you recall; irrespective of what the words were, whether they were good or bad words, tell us, and who said it.

A. You want just exactly the words?

Q. Right, as you remember them.

A. Oh, he asked what the hell we were doing over there, and I told him that we came over to talk to him, that we had quite a few of the people signed up and they wanted to be organized, and he said you come back in about two years, we don't want to be bothered at the present time. And then we left the office and went up to the corner store to get a drink.

Q. Now, who is "we"? All three of you?

A. That's right, Mr. Martini and myself and Mr. Bertolucci.

Q. Was there further conversation then?

A. There was.

Q. What was the conversation then, and who said what?

Mr. Berke: Where did this take place? I didn't get that.

(Testimony of Roy A. Rhodes.)

The Witness: At the corner store, about—oh, I imagine about a block from the office. We went in his station wagon and we sat in the car a few minutes and we asked if we could have permission to talk to the people, and it would be much easier to negotiate a contract; and we wanted to notify them [50] that we wanted to talk to people, we had pledge cards to pass out; and he said no, that he'd rather we not talk to the people.

Mr. Berke: I didn't get that. He said no what?

The Witness: He said no, he'd rather not we talk to the people at all till later, and we didn't—I can't remember all the conversation we had at that time, because it was some time back, but as near as I can recall he said, well, there's a board meeting tonight and I will take it up with the board meeting and I will call you first thing tomorrow morning.

Q. (By Mr. Karasick): Now, what board was it, did he say?

A. His Executive Board. He said he couldn't act upon his own, he'd have to take it up with his executive board, to give us permission to talk to the people or talk on any contract, that he would call us the next morning.

Q. Did he call you the next morning?

A. I never received no call.

Q. Did you later speak to him about the same subject matter?

A. I called him on the—I believe the next morning, Monday, which would be approximately the

(Testimony of Roy A. Rhodes.)

2nd—as near as I can recall, it would be the 2nd of August.

Q. Did you speak to him then?

A. Over the phone.

Q. And what was the conversation?

A. I said, I understand that you gave the people a five cent increase. He said, that's right, and that ended our conversation right there. [51]

Mr. Berke: May the Reporter read that again? Mr. Rhodes keeps dropping his voice, and it is certainly difficult——

Trial Examiner: Will you read it.

(Question and answer read.)

The Witness: As near as I can recall.

Q. (By Mr. Karasick): Now, you say that you told him you understood he gave the people a five cent increase? A. That's right.

Q. Where did you get that understanding?

A. I got many calls from the people we had signed up in the plant.

Mr. Karasick: I see. Your witness.

Mr. Berke: I move that last be stricken as hearsay.

Trial Examiner: No, that is just the source of his information, not the conversation itself. I think I will deny the motion.

Mr. Berke: Just one moment. Mr. Trial Examiner, I am going to move that all this testimony be stricken on the ground that it goes beyond the scope of the Complaint. I find nothing in the Complaint alleging that as an 8(a)(1), if that is the

(Testimony of Roy A. Rhodes.)

purpose for which it is offered. There is not a word in the Complaint with respect to it, not even approaching—— [52]

* * * * *

Cross Examination

Q. (By Mr. Berke): Mr. Rhodes, what Local did you say you were Secretary-Treasurer of?

A. The General Truck Drivers Local 980.

Q. 980? A. Right.

Q. The two occasions that you have just testified to of conversations with Mr. Martini were the only two occasions that you conferred with Mr. Martini, were they? A. It was at that time.

Q. You later on had other conversations with him, did you not? A. Short ones.

Q. You met with him at other times, did you not? A. That is correct.

Q. In fact, you had gone out to have coffee with him many [54] times, have you not, since then?

A. Not me, not too many times. I don't believe that I went out to coffee with him since that.

Q. Since that phone call back in August of last year? A. Not me, no.

Q. You have otherwise, however, talked with him, whether you went to coffee with him or not, since that time?

A. I talked to him in his office, yes.

Q. Yes, in person, face to face?

A. With other representatives, yes.

Q. But with Mr. Martini, face to face?

(Testimony of Roy A. Rhodes.)

A. That is right.

Q. Mr. Rhodes, in that conversation with Mr. Martini, didn't it amount to more like this, that you approached Mr. Martini at that time and said you'd like to go through the plant to sign people up? A. No, no, that is not right.

Q. Pardon? A. No, that isn't right.

Q. You didn't say you wanted to go through so you could organize the people and sign them up on company time and company property?

A. I asked for permission to talk to the people, which they have parking lots there.

Q. I see. Did you say you wanted to talk to them on the parking lots? [55]

A. That's right, on the company property.

Q. Well, now, wait a minute. There is more than a parking lot to the company property, is there not, Mr. Rhodes? A. That is correct.

Q. Did you specifically state the parking lot or did you say you wanted on the company property?

A. I didn't say any.

Q. And at the time you came there it was during working hours, wasn't it? A. That's right.

Q. Yes. Why did you want to talk to the people, if you had them signed up, if that wasn't your purpose? A. We did not have them all.

Q. I see. So what you wanted to do was to go through the plant then and sign up people, is that right? A. No.

Mr. Karasick: Object; that is not what the witness has testified to. It is contrary to his testimony.

(Testimony of Roy A. Rhodes.)

Trial Examiner: Continue. The witness is capable of answering, I think.

Q. (By Mr. Berke): Wasn't that your object?

A. No, that was not right.

Q. And you say you didn't tell Mr. Martini that? A. No, I didn't. [56]

Q. And, as I understand it, you didn't specify any particular place on the company property, all you said was you wanted to talk to the people on company property?

A. Yes, we very seldom ever talk to them when they are working.

Q. Wait a minute. I didn't inquire about what you very seldom do? A. That is right.

Q. If you want the question read to you, you can ask the Reporter to have it read, if you didn't understand it.

A. No, we asked to talk to them during their lunch hour, when they were off duty, on company property.

Q. You asked Mr. Martini to let you talk to the people during their lunch hour?

A. That is right.

Q. Now, you didn't say that a moment ago when I asked you? A. Well, that was the fact.

Mr. Berke: I see.

Trial Examiner: Excuse me. Were those the specific words you used, or what you had in mind, or what?

The Witness: That is practically the conversation, when we talked to him.

(Testimony of Roy A. Rhodes.)

Q. (By Mr. Berke): That is your general practice you are talking about, or the conversation that you had on this particular occasion?

A. As near as I can recall, yes. [57]

Q. Now, on direct examination you said you knew pretty much the exact words, if I understood you correctly, that were used in that conversation.

A. Not exactly. I said to the best of my knowledge.

Q. And when you were telling the conversation, you didn't state anything about having asked to talk to the people during lunch time. Now, was that part of the conversation?

A. I don't recall that.

Q. You don't recall. Now, on this same occasion, Mr. Rhodes, did you tell Mr. Martini if he allowed you to go through the plant to sign up people that you would make a bargain with him, that you would leave the employees' wages just where they were?

A. I did not.

Q. You didn't tell him that?

A. I did not.

Mr. Berke: I have no further questions. [58]

* * * * *

ELMO MARTINI

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner: And your full name, what is your full name?

(Testimony of Elmo Martini.)

The Witness: Elmo Martini. [63]

* * * * *

Q. (By Mr. Karasick): Mr. Martini, what is your present position with the Respondent?

A. I didn't hear the question now, Mr. Karasick?

Mr. Karasick: Read it.

(Question read.)

The Witness: I am their General Manager.

Q. (By Mr. Karasick): And how long have you held that position?

A. Since November—wait a minute. Since January 1, 1954.

Q. Prior to that time had you been associated with Sebastopol Apple Growers Union in any manner?

A. Yes, sir, I was a member of the Board of Directors, acting as Secretary of the Board.

Q. During what period of time, Mr. Martini?

A. Between December of '53 through—until my resignation, when I took over as General Manager.

Trial Examiner: You mean just for one month?

The Witness: No, it was for one year.

Trial Examiner: December of '52, then; wouldn't that be it?

The Witness: Yes, it must have been '52. That's correct.

Q. (By Mr. Karasick): Now, have you held any other position with the Respondent, other than these two? A. No, sir.

Q. The Sebastopol Apple Growers Union is a

(Testimony of Elmo Martini.)

cooperative corporation, organized and existing under the laws of the State of California, is it not?

A. That is right, that's right. [64]

Q. And it consists of various grower members?

A. Yes.

Q. Approximately how many?

A. I don't know the exact count, but I don't believe I would be too much off if I said 250 grower members.

Q. And these members are individuals or concerns which have—grow apples and market them through the cooperative, is that it?

A. Yes, that's right.

Q. Are you a member of the cooperative, grower member? A. Yes, sir.

Q. As well as the General Manager?

A. That is correct.

Q. And did you state that you were a member of the Board of Directors presently?

A. Presently, no. I resigned at the time that I took over as General Manager.

Q. I see. How many members are there of the Board? A. There are nine.

Q. How long has the Association been in existence? A. Since 1911.

Q. How long has it engaged in its present enterprise at Molino?

A. I wish you would clarify that question a little bit. Do you mean how long that the present Molino plant has been there [65] or how long the packing house was at Molino?

(Testimony of Elmo Martini.)

Q. I was thinking specifically of the cannery, but will you explain that, please.

A. Well, the packing shed has been at Molino—that is our—I believe it is our No. 6 shed—has been there since possibly the early 20's. In 1951, a cold storage plant and a cannery were erected, and the same year I believe there was some other property bought there, so that the future expansion of the concern would be at our present Molino plant.

Q. So the cannery, for all practical intents and purposes, has been operating since 1951, isn't that correct? A. '51? That is correct.

Q. The packing shed, you mentioned before, is where fresh fruit is packed and shipped out, right?

A. Yes.

Q. And for that purpose it is contracted out to an individual contractor who hires his own employees, is that correct? A. That's right.

Q. The cannery operation is where you as General Manager with your assistants employ persons to operate the premises, is that right?

A. Yes. [66]

* * * * *

Q. Now, one of these plants, the Plant No. 5, was converted from a packing shed to a warehouse last year, wasn't it? A. That's correct.

Q. And the work of conversion was completed when? [73]

A. Oh, approximately during the month of August sometime.

(Testimony of Elmo Martini.)

Q. Now, what products are packed by the cannery itself?

A. We pack applesauce, pie-sliced apples, and we pack also an apple concentrate.

Q. Now, you handle some products which you have others pack for you, is that right? I am thinking of juice. A. Only one.

Q. Isn't that right? A. Yes.

Q. But the sauces and slices—all the packing is done at the cannery, generally speaking, with some exceptions?

A. Yes. We do as much of it there as we can.

Q. What size containers are these various products packed in? Now, I am referring—let's refer to them one by one. How is sauce packed, what size container?

A. Do you mean by that question, how do we pack it or how is it packed generally?

Q. How do you pack it?

A. In the past operations, we have only packed sauce in No. 10's and No. 303's. That would be—303's are known as a 16-ounce can, and the No. 10's are gallons.

Q. Does it also go by weight as well?

A. Yes.

Q. What is the weight of No. 10?

A. Of the gallon? [74]

Q. Yes.

A. Well, in the case of sliced apples, we like to get in there anywhere from 6½ to 7½ pounds.

(Testimony of Elmo Martini.)

Q. No, wait a minute. Are we talking about sauces or slices?

A. Well, you asked me what the weight is.

Q. Yes, I thought we were talking about sauce.

A. Well, sauce, I am not sure just what the weight of a 10 can is. I don't know.

Q. The weight of the 303 is 16 ounces?

A. The weight of a 303 is 16 ounces.

Q. All right. Now, let's get the slices.

A. The slices are packed by us in the No. 2 can and the No. 10.

Q. Now, the 2 is what weight?

A. One pound and—

Q. Is it a 20-ounce can?

A. One pound and—pound and 3 ounces.

Q. One pound and 4 ounces?

A. I believe so, yes.

Q. And the 10 can?

A. The 10, I'd say that I know we try to get up to—we like to get as much as possible in them because we sell them that way, we guarantee a certain weight in those cans, and they are quite difficult to fill, so let's say that we like to have 7 pounds of apples in them, 7 pounds of apple and liquid, or 7 pounds of apple drained, that is, draining the liquid out. [75]

Q. Would that be the total, or would it weigh more than that? A. No, that is the content.

Q. That is the net content?

A. Content, yes.

(Testimony of Elmo Martini.)

Q. I see. How many cases of finished product do you get from a ton of apples?

A. By that question would you like me to answer how many do we get or how many would we like to get?

Q. No, I think just how many you get.

A. We bounce around quite erratically on that. We like to get an average of 60 or better cases per ton.

Q. Now, what do you actually get, on an average?

A. I don't believe that we have done any better than probably 53 to 55 cases per ton.

Trial Examiner: Now, will you explain how much is in a case?

The Witness: Twenty-four—now, we are speaking of these 303's. We always refer to pack-outs in the terms of 303's; regardless of what they may be in, everything is converted back to the 303 can size.

Q. (By Mr. Karasick): That would be 20 ounces of slices or 16 ounces of sauce?

A. No, we are talking about sauce.

Q. Sauce? A. Yes. [76]

Q. All right. What about slices?

A. In slices we'll probably average 50 cases per ton. Again there is a great variance there, depending upon the quality of the apples, the amount of trimming, the thickness of the peel and size of the core. We could go on for quite a little while here.

(Testimony of Elmo Martini.)

Q. We are talking about averages, and these are—

A. So the average, let's say, is 50 cases.

Q. And again 303 has become your standard here?

A. No, in the case of sliced apples, we leave it at No. 2's, because that is the only size that we pick, that is the size that they are sold in to the housewife, that is, over the shelf at the grocery level. [77]

* * * * *

Mr. Karasick: Mr. Examiner, it is my understanding that Counsel for the General Counsel and Counsel for the Respondent hereby stipulate and agree that the following individuals are supervisory employees of the Respondent: William McGuire, Sales Manager; Errol—

Trial Examiner: Give the spelling at the same time.

Mr. Karasick: M-c-G-u-i-r-e; Errol, E-r-r-o-l, Wilson, Accountant and Traffic Manager; Louis Turnage, T-u-r-n-a-g-e,—

Trial Examiner: How do you spell his first name? [79]

Mr. Karasick: L-o-u-i-s.

Trial Examiner: What is his position? Excuse me.

Mr. Karasick: Packing House Manager. Oh, pardon me. That is out of this.

Mr. Berke: Yes.

Mr. Karasick: Will you strike that, because the

(Testimony of Elmo Martini.)

packing house is not part of their immediate operation that we are concerned with.

Trial Examiner: Are you striking his name, too?

Mr. Karasick: Yes. Leonard Duckworth, Superintendent of the Cannery; Charles Williams, Cannery Foreman; Ella Herrerias, H-e-r-r-e-r-i-a-s, Cannery Floor Lady, night shift; Edna Hardin, H-a-r-d-i-n, Cannery Floor Lady, day shift; John Aguire, A-g-u-i-r-e, Warehouse Foreman.

Mr. Berke: Those are the ones we stipulate and agree to are supervisors within the meaning of the Act. [80]

* * * * *

Q. (By Mr. Karasick): Now, the cannery in the past has operated on a seasonal basis, has it not? A. Yes, sir.

Q. It begins cannery operation about when normally, middle of July? Isn't it around there?

A. In applesauce the normal—in a normal year, or let's say an average year, you would probably find canners starting up about the 25th of July, from the 25th of July to the 1st of August. Those of us, however, that have sliced successfully Gravenstein apples, which are the early apples, will start slightly earlier than that time.

Trial Examiner: Isn't that what most of the apples up here are?

The Witness: Yes, summer apples, but we have considerable later varieties that are harvested in the fall. [94]

* * * * *

(Testimony of Elmo Martini.)

Q. (By Mr. Karasick): Is it correct, Mr. Martini, that in 1951 the cannery began operations for the season on August 24th and ceased operations on November 7th?

A. That is what this paper says here.

Q. I am using it to refresh your recollection. Is that correct? A. Yes.

Q. That paper is based upon—that I have given you has been supplied by your Counsel and is from your records, is it not?

Mr. Berke: That's correct.

Mr. Karasick: Is that right?

Mr. Berke: Yes.

Mr. Karasick: All right, I so stipulate.

The Witness: O.K.

Mr. Karasick: I have given the witness the paper to refresh his recollection, to save time, Mr. Examiner.

Q. (By Mr. Karasick): In 1952, the day shift began on July 23rd, ended November 8th? [95]

A. Yes.

Q. And the night shift on July 28th; it ended November 6th, is that right?

A. I suppose so.

Q. Well, that is what the figures from your records show? A. Yes.

Q. Do they not?

A. Yes, that is what they show, yes.

Q. In 1953, the day shift began July 18th, ended December 23rd? A. Yes.

(Testimony of Elmo Martini.)

Q. The night shift began July 23rd, ended November 20th? A. Yes.

Q. 1954, the day shift began July 15th—

A. December 11th.

Q. Ended December 11th, right?

A. Yes.

Q. And the night shift began July 20th and ended October 15th? A. Yes. [96]

* * * * *

Q. Thank you. Now, last year on July 31st you awarded a five cent wage increase to the employees, did you not? A. On July 31st?

Q. Yes.

A. I just checked that. It was not on July 31st.

Q. Oh, it was not? A. No.

Q. When was it, Mr. Martini?

A. I believe we have evidence here that shows exactly when it was, Mr. Karasick.

Q. Well,—

Mr. Berke: May I show the witness these records to refresh his recollection? [97]

Q. (By Mr. Karasick): Did you check these records? A. Yes, sir.

Q. Do you have any independent recollection of them? A. What's that?

Q. Do you have any independent recollection of them? A. Of the records?

Q. Yes.

A. Well, other than the time element, and when the time element was brought up I checked the records to see when it was.

(Testimony of Elmo Martini.)

Q. And what are these records, may I ask?

Mr. Berke: Would you show them to him, Mr. Karasick. I think he would rather see them.

The Witness: Yes, I would rather see them.

Q. (By Mr. Karasick): Well, I will show them to you; what are they?

Mr. Berke: Why not hand them to the witness?

Mr. Karasick: I think it is quite evident I am examining this witness. Now, I have records here that Counsel has just given me—

Trial Examiner: Are you asking your question of Counsel or the witness?

Mr. Karasick: I am asking the witness what records these are.

The Witness: They are payroll records.

Q. (By Mr. Karasick): And they are payroll records I find for four individuals? [98]

A. Yes.

Q. Why those four individuals, any reason?

A. No, just that he's just brought over four. There's others.

Mr. Berke: If Counsel wants an explanation, it is a case of not bringing all the records. He took—I think you will find out, the alphabet—"A" and "B"—Mr. McGuire was asked during the noon hour to get the records to show as to what happened on that pay increase and the records will all be the same. If you want them all brought in, we'll be glad to bring them all in.

Q. (By Mr. Karasick): These are payroll records for Elizabeth Augustin, A-u-g-u-s-t-i-n; Inez

(Testimony of Elmo Martini.)

Brock, B-r-o-c-k; Goldie Mahoney, M-a-h-o-n-e-y; and Eleanor Bertossi, B-e-r-t-o-s-s-i; right?

A. Yes.

Q. Do you need all four records to check your recollection? A. No, no, only need one.

Q. Let's take just one of them then, and I will give you the record of Elizabeth Augustin. Now, will you tell us from examining that record when the increase was given?

A. O.K. Here's your payroll period ending 8/7 —on 7/24, the pay period ending 7—that's July the 24th. The rate of pay was 95 cents per hour. Immediately after the 24th it went to a dollar.

Q. How immediately afterwards, you mean that week? [99]

A. No, immediately, because that's when this particular phase of it was called to my attention, as soon as the checks were made.

Q. What shows on that record that it was immediately afterwards—anything?

A. Well, no, nothing shows on here that it was immediately afterwards?

Q. Nothing at all?

A. It commences on Monday of the week ending the 31st.

Q. But there is nothing on that record that shows when that wage increase began, is there; there is only one showing, that is, of that week, at least some time of that week?

A. The wage increase began immediately after the pay period of the 24th was paid out.

(Testimony of Elmo Martini.)

Q. Now, apart from these records, one of which I have just shown you, do you have any independent recollection of when that wage increase was granted? A. Yes.

Q. And what is your independent recollection, Mr. Martini?

A. As soon as the employees had received their checks of the week ending the 24th, it was called to my attention by some of the night workers, all female workers, that they had not received their nickel per hour increase. [100]

* * * * *

Q. (By Mr. Karasick): Do you have something more you want to say about this, Mr. Martini, do you want to explain any further this wage increase? A. Yes.

Q. Would you do so, please.

A. Yes. I think it should be explained, after the checks of the pay period of the 24th were issued I was approached by some of the employees that they had not received their nickel per hour raise. Now, that came about when I asked what the pay —what the people had received for compensation the year previous, [103] I was told by my office that it was 85 cents they were receiving on the day shift, and I have always been accustomed to having a nickel differential between day and night. Therefore, I moved my pay from 85 to 90 cents, thus giving the people at the beginning of the season 90 cents, and I thought 95 would have given the night people a nickel. Now, when these people ap-

(Testimony of Elmo Martini.)

proached me they said that you gave the day shift a nickel increase but you didn't give it to the night shift, and I inquired and checked the record and found that they were right and went back and told them that since I was in error, that they would automatically have their nickel an hour, which would put them from 95 cents, that is at night, to a dollar, and thus I moved—and had the nickel differential, and moved the day shift people to 95 cents and kept my nickel.

Q. So the day shift got a nickel and the night shift got another nickel, is that it?

A. No, the day shift got a dime, Mr. Karasick.

Q. I see, a dime? A. Yes.

Q. And the night shift got a nickel? I see.

A. Yes.

Q. Now, when was the effective date of that increase?

A. The effective date was the end of July. It was for the week ending, I believe, July the 31st. I just saw it on the record there. I think it was then the pay period was. [104]

Q. And the date the increase was granted was the week prior to that?

A. The date when the increase was granted was immediately after the checks were issued to the people. That's when it was called to my attention.

Mr. Berke: On what day?

The Witness: I don't know when our payday is, whether it is Monday or a Tuesday.

Q. (By Mr. Karasick): As a matter of fact,

(Testimony of Elmo Martini.)

you have no independent recollection of the day that was granted, do you, and your records don't show, do they?

A. It was on the day that the checks were issued for the period of the 24th, that I know, Mr. Karasick. That's when it was called to my attention; immediately upon receiving the checks, these people approached me and brought my attention to it.

* * * * *

Q. (By Mr. Karasick): Mr. Martini, why was Mrs. Storey discharged?

Do you have the question in mind, Mr. Martini?

A. Yes. For cause.

Q. Well, what does that mean? What was the cause?

Mr. Berke: Do you understand the question, Mr. Martini?

Trial Examiner: Will you explain why you are hesitating? If there is some reason—

The Witness: Well, I have gone through that at quite some length, and it is quite lengthy. There is one thing that hinges on another, so therefore—

Q. (By Mr. Karasick): All right. Will you tell us the reasons for the discharge of Mrs. Storey?

A. She was discharged because I was in the cannery—

Q. I am sorry; she was discharged what?

A. During the day that I was present in the cannery office, and just below me, below the—I will have to use your—should use your diagram here. I was standing on the—

(Testimony of Elmo Martini.)

Trial Examiner: Which number is that? [112]

The Witness: That's—

Mr. Karasick: 23, I believe.

Trial Examiner: 23?

The Witness: Yes, 23. I was standing on the—I was going in to see Mr. Duckworth and standing on the deck over the—on the deck at the lab, there is a little balcony there just outside of the lab which is possibly ten feet above the floor level. I saw Mrs. Storey, while the plant was running, down just below me with a group of people. I asked Mr. Duckworth what she was doing there, and he told me that she had clocked out, and I asked him if she had clocked out why she wasn't leaving the building; so he went down and told her to leave, and when she refused to leave he told her that she would be discharged, because she had this group of people there, which were in a very, very precarious position. We have changed the plant just because of it, just because the thing was very, very dangerous to the employees. It was no place to be standing around, and I wanted no one to stand around in that position.

Q. (By Mr. Karasick): Now, let me get this clear in my mind, Mr. Martini. I understand you to say that you had physically changed the plant because of this incident?

A. Not wholly, but it was one—we had to change that, because it wasn't a very safe thing for us to—regardless of what else we have done, that particular portion of it was going to be changed. [113]

(Testimony of Elmo Martini.)

Q. Yes, so the change was not because of this, was it, Mr. Martini?

A. Well, it was because of the danger that there was involved to people there. Now, we didn't want a fork-lift and women all mixed up in one little area there. [114]

* * * * *

Q. (By Mr. Karasick): Now, you say there was danger connected with this?

A. I thought so.

Q. All right. What was it that made you think there was a danger connected with it, what was the danger? [116]

A. There was a fork-lift that picked up a tank that weighs approximately 2,000 pounds, at one point just north of the—of the specking table. It is not a specking table, we just call that a—that is the inspection belt.

Q. Now, will you mark where the fork-lift was.

A. The fork-lift works all through here, all through this area, from directly south, into the point here, because we do store tanks over in here, so it would work halfway between the inspection line and on through the two vacuum bells which are halfway beyond the blanching tank to the north of the plant.

Q. I don't—perhaps I have confused you, Mr. Martini. I don't mean generally; where did the fork-lift operate that day, where was the fork-lift when you saw these women, in relation to them?

A. The fork-lift was—

(Testimony of Elmo Martini.)

Mr. Berke: You mean at that precise moment, or do you mean that day?

Q. (By Mr. Karasick): That moment of time, when this group was there, where was the fork-lift in relation to it?

A. Well, I saw the fork-lift at that moment back on from this point.

Q. Now,— A. Back.

Q. Now, show us where.

A. From the point where they pick up a 2,000 pound tank here, [117] just north of the inspection table—you back around this way and then drive forward.

Trial Examiner: Can you say not "this way," but toward what?

The Witness: Toward the door. He will back out toward the door, toward the exit door, and since the place was very, very congested, he drives onto the blancher and then back toward the—back toward the lab, and then swings back around and puts the tanks under the blancher bells, or under the vacuum bells.

Q. (By Mr. Karasick): Now, have you finished your answer? A. Yes.

Q. Now, are you telling us, Mr. Martini, what the normal operation of the fork-lift is, or what it was at that particular moment of time, that day?

A. That fork-lift is doing that almost at all times during the day. It goes from—it carries out that cycle.

(Testimony of Elmo Martini.)

Q. So you are telling us what the cycle is, is that right?

A. And it is doing that within—I believe we keep it—in fact, I'm sure of it, our blanching time is 17 minutes per tank, and there are two tanks, so he is making a maneuver like that every six or seven minutes.

Q. I see. Now, let's get to this day. Was there anything different about the fork-lift that day, or its operation, than there was on—any other day?

Mr. Berke: Have we got in the record, Mr. Karasick,—I didn't mean to interrupt you, but the day that is involved here?

Mr. Karasick: Well, we will get the day.

* * * * *

Q. (By Mr. Karasick): Mr. Martini, what was the date?

A. I don't know. You will have to look up the record on that one, too.

Mr. Berke: Well, I will stipulate, if you want to, it was September 25th, and if you have got the calendar he can look at the day and say what day of the week it was. [119]

* * * * *

Trial Examiner: All right. Were you stipulating as to the date?

Mr. Karasick: The date? I am perfectly willing to stipulate. I think that is right, from my recollection. If it is wrong, we can correct it. I will stipulate it is September 25th.

Q. (By Mr. Karasick): Was that a Saturday, Mr. Martini, after looking at the calendar?

(Testimony of Elmo Martini.)

A. Yes.

Q. Is Saturday different than any other day there?

A. Just as crowded, just as crowded.

Q. Operations are the same on Saturday as any other day, aren't they? A. Yes.

Q. The fork-lift operates in the same manner?

A. Yes, exactly.

Q. Employees around the same number, right?

A. Yes.

Q. All right. Now, what was so dangerous about this fork-lift, with respect to the women?

A. It could run over them.

Q. Could?

A. Not only run over them, the fork-lift—that wouldn't be as much danger as a tank. After all, the fork-lift could—was lifting to its top capacity and those fork-lifts going over a steel grate sometimes could topple over and dump the entire load, and you don't know which direction it is going to go, could go to the right or could go to the left. It would depend upon what wheel sunk through the steel grates that are across a gutter that we have, right down the center of it.

Now, we have had fork-lifts in there before; fortunately, the tank was not at the high point.

Q. Now, how long did you see her talking there?

A. Oh, ten, fifteen minutes.

Q. And—

Trial Examiner: Was this before—Excuse me. Go ahead.

(Testimony of Elmo Martini.)

Q. (By Mr. Karasick): Then what did you do?

A. Mr. Duckworth came back up and he said that she wouldn't leave, and I told him to be sure and go down and tell her to leave. [121]

* * * * *

Q. I didn't get Mr. Duckworth in this picture before. How does he come in?

A. Well, I sent him down there to have her move along.

Q. When did you send him down there?

A. After the ten minutes that she had been standing there.

Q. I see. You saw her there for ten minutes, then you sent Duckworth down, telling her to go on? A. Yes.

Q. Duckworth went down? A. Yes.

Q. He came back? A. Yes.

Q. What did he tell you?

A. Told me she wouldn't leave.

Q. She wouldn't?

A. Yes. So I told him to go back down and be sure that she left.

Q. And then what did he do?

A. Went down and he told Mrs. Storey to leave the premises.

Q. And she was there for about fifteen minutes altogether then, is that correct?

A. Fifteen or twenty minutes, yes.

Q. Fifteen or twenty minutes?

A. Yes. I would say that or longer.

Q. Would you say closer to twenty than fifteen?

(Testimony of Elmo Martini.)

A. Yes.

Q. I see. During this period of time, did you go out and talk to Mr. Storey about this?

A. Yes, shortly after that, yes.

Q. And do you remember that in talking to Mr. Storey you told him to go in there and fire his wife?

A. No, sir.

Q. I beg your pardon?

A. I did not say that.

Q. Oh, what did you say, Mr. Martini?

A. I told him I had fired his wife.

Q. Oh, you had fired his wife? A. Yes.

Q. This was before she left, though?

A. No, she had left.

Q. Oh, she had left? A. Yes.

Q. Why did you tell Mr. Storey that?

A. Because I had also had him into my office and told him that I didn't want him to leave his post, so I told him that I had fired his wife, and that the next time I had a report that he had left his post, that I would fire him.

Q. How long after seeing Mrs. Storey there did you talk to Mr. Storey?

A. Oh, after I first saw her there? [123]

Q. Yes. A. I'd say a half hour.

Q. I see. So very shortly afterwards you went out and told Mr. Storey this? A. Yes. [124]

* * * * *

Q. (By Mr. Karasick): Now, what was the reason then for Mrs. Storey's discharge, Mr. Martini?

Mr. Berke: Just a moment; asked and answered.

(Testimony of Elmo Martini.)

Mr. Karasick: Succinctly put, is what I want. I want a reason from this individual as to why Mrs. Storey was discharged.

Trial Examiner: You mean such as the company might have kept on their records as a specific ground for discharge?

Mr. Karasick: That's right.

Trial Examiner: If there is such a word, Mr. Martini can give it.

The Witness: Well, the reason for her discharge was calling together a congregation of women and standing in the alleyway. Now, I had prior to that time talked to Mrs. Storey, talked to her as a gentleman. I had Mrs. Storey and a Mrs.—I believe her name is Lila Layman, into my office with Mr. Duckworth, and I told her at that time that I wanted no more occurrences of that. I fairly and squarely warned her.

She did it on another occasion; therefore, it was cause for discharge. [125]

Q. (By Mr. Karasick): What did she do on another occasion, Mr. Martini?

A. On a previous occasion?

Q. Yes.

A. On a previous occasion she—well, again I was in the cannery in a conference with Mr. Duckworth. She had called a group together and then called me down, and wanted to talk to me, at the time that the day shift was going back from the lunch period; they had already—it was prior to their—some had not clocked in, others had clocked

(Testimony of Elmo Martini.)

in and were at their posts, ready to run the cannery, the cannery was ready to start. At that point I went down there and she had—she asked me pointblank if I would meet with Mr. Grami and Mr. Rhodes.

Q. Who are Mr. Grami and Mr. Rhodes? Would you identify them? They are Union representatives?

A. Yes. Mr. Grami is with the A. F. of L., and Mr. Rhodes, I believe, is Secretary and Manager.

Q. They are representatives of the Union involved here, aren't they? A. Yes.

Q. Yes. Go on.

A. I told her at that point that I would not meet with either one of them as the case, that is, the labor case was in the hands of the N.L.R.B., and they would shortly render a decision about what our plants would do. I told the girls that Mrs. [126] Storey said that if we didn't meet with them the girls would walk off, including herself, and I asked —said now, Girls, the best thing for you to do is to go back to work and forget the issue, and that's it, they did. [127]

* * * * *

Q. (By Mr. Karasick): Why was Elsie Dickerson discharged, Mr. Martini?

A. I did not discharge Elsie Dickerson. You have the record on that, but the story that I hear is that she was discharged for defacing or marring apples. [130]

* * * * *

Q. Why was that ground for discharge?

(Testimony of Elmo Martini.)

A. Well, because it is a—the story that I have, which I am [131] sure is correct, was that our machines removed cores—

Q. What's that?

A. Removed peels and cores from the apples. A trimmer trims off bruised tissue and, oh, possibly a worm stain that hasn't been cut off, and Mrs. Dickerson was intentionally inserting into the opposite side of the apple the core that had already been removed. Now, in that particular instance, the apple goes up through to the seed culling machines and these machines remove what the corer has not removed; in other words, for sliced apples we have to remove the seed cell. Now, when an apple has a core in it from that direction the seed cellar will pick up that core and have seed cells all over it, into the—they could get into the product, and that could downgrade that particular lot of sauce; it could be a thousand cases, and it will downgrade it to a second grade or a grade that you may have to sell at possibly 50 percent of the general market. In fact, that is—

Q. Has that ever happened to you?

A. To have to sell apples at the lower price?

Q. Has it ever happened that you had to downgrade a product for that reason?

A. We have had to downgrade it for that reason, yes.

Q. You have? A. Yes.

Q. In the past? [132] A. Yes.

* * * * *

Q. So that the only reason Mrs. Dickerson was

(Testimony of Elmo Martini.)

discharged was because she had done this to an apple and this would endanger the quality of the product, is that what you are saying?

A. Yes, that's correct.

Mr. Berke: Just a moment, just a moment. That misstates the evidence. I object to it; "done this to an apple" makes it appear as though it is one apple.

Trial Examiner: I don't understand the objection, Mr. Berke.

Mr. Berke: I object to his misstating the evidence, sir. [133]

Trial Examiner: The witness just confirmed it is correct.

Mr. Berke: That it was done to only one apple? I didn't understand that. If the witness said so, all right.

The Witness: No, it wasn't done with only one apple.

Q. (By Mr. Karasick): Well, how many apples were involved, Mr. Martini?

A. Well, it was done on two occasions, that she would have—

Q. Two apples?

A. No, not two apples, two occasions. We don't know how many apples. There were several apples seen, there were more than one apple, I assure you.

Q. How many apples was this done to?

A. I am not acquainted with the full extent of it, but there were several apples that were seen.

* * * * *

(Testimony of Elmo Martini.)

Q. When was Mr. Duckworth made Superintendent at the Plant, Mr. Martini? Last season was the first time, was it not?

A. I don't remember the exact date.

Q. No, but it was last season, wasn't it?

A. Yes, it was during the last season. It wasn't right at the beginning of it, it was approximately a week or so after the season—

Q. Now, who was the Superintendent before him? A. Darrel Beavers.

Q. What was Duckworth's position before he took Beavers' job?

A. He was our technician, and I would have classed him as Assistant Superintendent.

Q. He had been Assistant Superintendent?

A. An Assistant Superintendent and Lab Technician.

Q. To Beavers, is that it? A. Yes.

Q. And then when Beavers was no longer there, then Duckworth? A. Yes, that's right.

Q. Do you remember about when Beavers left and Duckworth took over?

A. Oh, I don't remember the exact date. It was very short—right immediately after the beginning of the season.

Q. In July?

A. Yes, it was in July, I am sure of that. Probably around the 20th. [151]

Q. I see. After you had actually begun operation of the cannery then, is that right?

A. I don't recall whether we had operated yet or

(Testimony of Elmo Martini.)

not. I don't recall. I do not believe that we had operated the cannery yet when Darrel Beavers left our employ.

Q. Well, in any event, am I right in this, that Beavers had the same duties that Duckworth did, Duckworth just succeeded Beavers' position?

A. Duckworth just what?

Q. Succeeded Mr. Beavers' position?

A. Yes, yes.

Q. There is no difference in authority or responsibility, right?

A. No, no, with the exception that Duckworth is a technician in that line of work and he has a little bit more knowledge of the fine points of the actual canning and processing of apples.

Q. But that didn't affect the supervisory authority or responsibility? A. No.

Q. That remained the same, is that right?

A. Yes.

Q. As Beavers' had been? A. Yes, sir.

Q. Now, on October 15th, 1954,—I think that date is already shown in the record—— [152]

A. On October what?

Q. 15th. A. Yes.

Q. You reduced operations to one shift, is that correct? A. Yes, that is correct.

Q. Now, in 1952 and 1953, you laid off the night shift and kept the day shift going, is that right?

A. That's correct.

Q. In 1954, you laid off employees between the two shifts, is that right? A. Yes.

(Testimony of Elmo Martini.)

Q. You selected some from one shift and some from another? A. Yes, yes.

Q. And do you know the—and you held a meeting of the employees in the warehouse?

A. Yes.

Q. On the afternoon—at the close of the first shift, and right after the second shift came on, to notify the employees of the lay-off, is that correct?

A. Yes.

Q. At that meeting, or shortly thereafter, you issued a letter to the employees, telling them, explaining in effect about the lay-off, did you not?

A. Yes.

Mr. Karasick: I have asked the Reporter to mark as General [153] Counsel's Exhibit 25 for identification a document on the letterhead of Sebastopol Apple Growers Union, bearing the date of October 14th, 1954, addressed to all employees, and ask you if that is the letter to which you refer.

A. Yes, that is correct, this is the letter.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 25 for identification.)

Mr. Karasick: I offer the document in evidence as General Counsel's Exhibit 25, and is my recollection correct, Mr. Examiner, that I have not yet offered General Counsel's Exhibit 24? If I haven't, I would like to offer it at this time. [154]

* * * * *

Q. (By Mr. Karasick): You reduced operations to one shift on October 15th, 1954, is that

(Testimony of Elmo Martini.)

correct? A. That is correct.

Q. Now, that shift was one which was selected between day and night shift employees previous to that time, right?

A. What was that now?

Q. That shift was selected from employees who up to that time had worked on both the day and night shifts, right? A. Yes, that is correct.

Q. What you did then was retain a single shift and operated only during the day units of a night shift—you didn't have a shift which operated at night any more, is that right?

A. That is right.

Q. The letter that you hold in your hand, General Counsel's Exhibit 25, bears the date of October 14th, 1954, does it not? [156]

* * * * *

Q. (By Mr. Karasick): Did you want to explain something? A. Yes.

Q. In regard to the question?

A. Yes. When you asked me if the night shift was taken off in 1952 and '53—

Q. Yes? A. —I said yes.

Q. Yes.

A. That is correct, isn't it? Now, did you mean there was only the shift—were only the night shift employees removed?

Q. Primarily the night shift.

A. Is that what you meant?

Q. That is exactly what I meant.

A. I don't know.

(Testimony of Elmo Martini.)

Mr. Berke: Yes, well, that's the point.

Q. (By Mr. Karasick): You don't know?

A. No, I don't know. [157]

* * * * *

Q. (By Mr. Karasick): Your testimony is you don't know?

A. I do not know. I'd have to check the record on that, if it is available. Those are difficult records to check, with such a revolvement of labor in that organization. We will check through; if there are, we will certainly get them.

Mr. Berke: Mr. Karasick, we will do our best.

Mr. Karasick: Will you?

Mr. Berke: Just any records you want, just ask for them. [159]

* * * * *

Q. (By Mr. Karasick): You will recall yesterday I asked you to check, and you were good enough to indicate that you would, with respect to whether or not in 1952 and 1953, at the time you reduced operations to one shift, you did not lay off the night shift and continue working with the day shift for the balance of the season. Did you make such a check? A. Yes.

Q. What is the answer?

A. I found that in the past there, the people were picked out in exactly the same way, both—

Q. I wanted to know whether or not it is true, Mr. Martini, that in 1952 and 1953, when you reduced the operations to one [168] shift—

A. Yes.

(Testimony of Elmo Martini.)

Q. —you did not lay off the night crew and continue working altogether or substantially with the day crew—when I say “substantially,” I mean you laid off the night crew and only used to fill in for people that left on the day crew, never got back on the night crew in those years?

Mr. Berke: I wonder if the witness understood the question. It puzzles me. There is something wrong with the syntax, the way it starts out, and then—

Mr. Karasick: Well, I will be glad to rephrase the question, surely.

Q. (By Mr. Karasick): The question I am posing to you is this, Mr. Martini, and again, if it isn't clear, please tell me. I don't want you to be confused.

In 1952 and 1953 you reduced the operations to one shift, right? A. Yes.

Q. In doing so, is it not true that you laid off the night shift as such and continued working with the day shift? A. It is not true.

Q. It is not? A. No.

Q. All right. Now, what is true, Mr. Martini?

A. There were employees in both 1952 and 1953 that, after the [169] lay-off, went to work on the day shift, that had come from the night shift.

Q. Yes, and they were employees who filled in for vacancies that occurred after that time on the day shift, isn't that true?

A. No, no, right at the time.

Q. You mean that they were employees selected

(Testimony of Elmo Martini.)

from lay-offs, or laid off on both shifts in 1952 and 1953? A. Yes.

Q. Your records show that, do they not?

A. Yes, yes. [170]

* * * * *

Q. Thank you. Now, I think that there are some twenty employees whom you say quit on the night of October 15, 1954, is that right?

A. I only have it by reports that were given me by supervisors and looking at the record there I would say yes.

Q. I don't want to take advantage of you by numbers, I will just call your attention to the exceptions to the Regional Director's Report on Challenged Ballots. You remember there is an appendix to that document which lists employees whom the company alleges quit, is that right? A. Yes.

Q. Let me show it to you.

A. That's right, I remember the number. [179]

Q. You remember the number — 20, weren't there? A. Yes.

Q. And they are named in that document?

A. Yes.

Q. Now, do you know whether or not any of that 20 quit, of your own personal knowledge?

A. I know that they had not reported to work, to complete their shift that night.

Q. No, my question to you, Mr. Martini——

Mr. Karasick: And I move to strike the answer as not responsive, please, because this gets into the question——

(Testimony of Elmo Martini.)

Trial Examiner: No, I think that is partial knowledge on his part. I will let it stand.

Mr. Karasick: All right.

Q. (By Mr. Karasick): Did any one of the 20 named employees personally tell you at that time, or at any time, that they had quit work?

A. None of the employees, Mr. Karasick, actually told me that.

Q. All right, that answers my question.

A. But, if you don't mind, I'd like to explain a little further. I know a little bit more than that.

Q. If you want to explain, you go right ahead.

A. My supervisors informed me that several told them if they weren't going to work Monday there was no use working that night, and they left. [180]
* * * * *

A. After these shifts started up that evening, that afternoon after the lay-off, I would estimate now that we ran with a 75 percent crew. The crew, the full crew wasn't there.

Q. That's only your estimate, right?

A. Well, I'm sure of the figures, because that's about what we have found, chasing these records down, over the past seven or eight months, that's all the people that turned up to work; and we knew about it, and those particular items were pointed out to me at the time, that so-and-so said if she wasn't going to work Monday she might as well leave them. [182]

* * * * *

(Testimony of Elmo Martini.)

Q. (By Mr. Karasick): Now, after that—Strike that.

During the 1954 season the Respondent sent apples to the Sebastopol Apple Co-op, another company, for processing and putting in cans, is that right? A. That is correct.

Q. And do you recall that during the 1954 season the co-op canned some—in excess of 80,000 cans—cases for you, and that of these there were in excess of 65,000 303's, and the balance of 15,000, in round figures, being 8-ounce? [191]

A. I recall that the figure is somewhere around that figure, yes.

Q. Again would you check and let me give you the exact figure so that you can make an exact check, if you will, and again with Mr. Berke's consent.

The co-op canned 80,587 cases during the 1954 season for you—and by "you" I mean the Respondent—and of these 65,322 were 303's and the balance of 15,264 were 8-ounce, that's right.

When did you begin taking applications for new employment this year?

Mr. Berke: Just a moment. What is the relevancy?

The Witness: Oh, I don't know.

Mr. Berke: Wait a minute—as to this year? We are only concerned with last year, and we have already gotten background stuff in, and nothing to do with last year's events either but—

Trial Examiner: I am not sure that I quite understand the picture; with reference to what, you

(Testimony of Elmo Martini.)

mean the calendar date or do you mean with reference to the time the cannery was started?

Mr. Karasick: I think I will withdraw the question and get at it more directly, so that there will be no misunderstanding about it.

Q. (By Mr. Karasick): Are you using this year for the first time new application forms, Mr. Martini? [192] A. A new application form?

Mr. Berke: Now, just a moment.

Q. (By Mr. Karasick): Is that a new application form?

Mr. Berke: Just a moment. I am going to object to it. It's irrelevant and immaterial as to whether they are using a new form or not.

Mr. Karasick: I think it may or may not, depending on the witness' answer.

Mr. Berke: Well, this is a fishing expedition, and I'm certainly—

Mr. Karasick: Well, let's show it is not a fishing expedition. Here is the document I am going to show him, Mr. Berke.

Mr. Berke: Even so, I think it is irrelevant. There is nothing in the Complaint about the alleged violation, if that is what Counsel is getting at. If it isn't, it certainly isn't background; it is foreground, if anything, and I don't understand that the Board as yet has ruled that foreground is applicable.

Mr. Karasick: I don't want Mr. Berke to be taken—to be under any misapprehension as to my intentions now or at any time, Mr. Hemingway, or anyone else here. I intend to ask the witness ques-

(Testimony of Elmo Martini.)

tions about this document, which is an application form, I am informed, and just recently came to my attention within the last couple of days as now being used by the company. If it is being used by the company, and I think the [193] witness will so testify in regard to it—if he doesn't, we have witnesses who will—I then intend to amend the Complaint to allege as an unfair labor practice—

Mr. Berke: I certainly will object to it. It will be absolutely incompetent and improper, and Mr. Karasick ought to know better.

Mr. Karasick: On what ground, I wonder, Mr. Examiner, would it be incompetent or improper?

Mr. Berke: Because, to amend at this late date on a ground which has nothing to do with the events that transpired last year, which is the basis of this litigation, is certainly improper.

Mr. Karasick: I would like to—

Mr. Berke: And General Counsel is making a case as he goes along day by day. That is what is improper.

Mr. Karasick: It isn't only that that we depend on, Mr. Examiner; I beg to point out that this is a continuing violation.

Trial Examiner: Do you have a form of application that was used prior, in prior years?

Mr. Karasick: No.

Trial Examiner: Is your question whether or not this form of application is the one which was used?

Mr. Karasick: No, my question is now whether this form of application is presently being used.

(Testimony of Elmo Martini.)

This is a continuing [194] violation alleged, against the employers named in this Complaint, that violation being with respect to their employment and continued employment by this Respondent. It is our contention that this application on its face and per se is a violation of the Act. If the application is being used by this Respondent, it is perfectly proper to put in the evidence with respect to that and amend the Complaint.

I may state further that this application first came in my hands on Sunday of this week. It is the first time I knew of it.

Trial Examiner: Well, apparently it was represented to you as something new that hadn't been used before.

Mr. Karasick: That's right, but it is being used with respect to the employees the company is now hiring, and some of these employees are employees who worked for it previously and had a continuing expectation of employment.

Trial Examiner: Well, would you mind asking preliminarily whether or not any application form was used in prior years?

Mr. Karasick: No, I have no objection to that.

Trial Examiner: And whether or not, if there was one, it was in this form.

Mr. Karasick: No, I don't have any objection.

Trial Examiner: If you will put it in that form, I will appreciate it.

Mr. Karasick: Surely. [195]

(Testimony of Elmo Martini.)

Q. (By Mr. Karasick): Will you answer the Examiner's question in that regard?

A. We had another form, a very short form, with the name and—I really haven't looked at it too carefully, but there wasn't all the information on there that we wanted, and so we—

Mr. Berke: Well, the point is, did you have another form, application form?

The Witness: Yes, yes.

Mr. Berke: All right.

Q. (By Mr. Karasick): When did you begin using this form?

Mr. Berke: Just a moment. I object to that.

Mr. Karasick: I will ask—

Mr. Berke: Going to object on the ground—

Mr. Karasick: Will you wait until I have finished the question, Mr. Berke, please, and as soon as I finish I will pause and give you a chance to object.

Trial Examiner: Incidentally, I can tell you right now, Mr. Berke, the fact that it occurred this year will not make any difference in my ruling. It doesn't come within the same principle of evidence as the situation where someone makes repairs to an instrumentality that causes an accident.

Mr. Berke: I am not sure I follow you, Mr. Trial Examiner.

Trial Examiner: Well, never mind. I am going to permit the question to be asked.

Q. (By Mr. Karasick): I hand you this docu-

(Testimony of Elmo Martini.)

ment which has been [196] marked General Counsel's Exhibit 26 for identification, Mr. Martini, and ask you if that application form was used this year for the first time?

Mr. Berke: Just a moment. I object to it as incompetent, irrelevant and immaterial and beyond the scope of the issues in this case.

Trial Examiner: Overruled.

Mr. Berke: And if it is going to be gone into, Mr. Trial Examiner, I am going to ask for a continuation, because I am frankly taken by surprise.

Mr. Karasick: You are no more surprised than I was to get it, so we are both equally surprised.

Trial Examiner: I am not going to rule on the motion at this time for a continuance because I don't believe that it will be essential as yet. If, after Counsel has had an opportunity to speak to the witness, he feels that it may be necessary, I will consider it again, but at this time, however, I will deny any continuance.

Q. (By Mr. Karasick): Would you answer the question, Mr. Martini; do you remember? [197]

A. No.

* * * * *

Q. (By Mr. Karasick): Do you know the date that you began using this application?

A. No, I do not.

Q. Mr. Martini? A. I do not know.

Q. Was the first time this year?

A. Yes, sir.

Q. What month?

(Testimony of Elmo Martini.)

A. Let's see, this is July. It was in July, I'm sure of that.

Q. In July? A. Yes.

Q. Are you sure it wasn't in June as well?

A. I don't think so. It seems to me like we have been taking applications for approximately three weeks, three weeks—this is—must have started along the first of July or the end of June.

Q. I see.

A. I can check, though, if that is what you want.

* * * * *

Q. I hand you General Counsel's Exhibit 26 for identification, is that correct?

A. Yes, this is the form. [198]

Q. That is the one you have been using?

A. Yes.

Q. And you are using it now?

A. That's right.

Q. And all applicants for employment are required to fill out that form, are they not?

A. Yes.

Mr. Karasick: I offer the document in evidence as General Counsel's Exhibit 26.

Mr. Berke: I object to it on the ground it is irrelevant and immaterial and incompetent, and beyond the scope of the issues involved, and it is not a part of the Complaint. There is no allegation pertaining to it in the Complaint by any stretch of anybody's imagination.

Trial Examiner: I will receive the exhibit in

(Testimony of Elmo Martini.)

evidence. I am not passing, in so ruling, upon the weight to which this document is entitled. [199]

* * * * *

Q. (By Mr. Karasick): Mr. Martini, I hand you General Counsel's Exhibit 23, which you will recall is the diagram of the cannery. [201]

A. Yes, sir.

Q. And, for the record and the Examiner, I would like to take you through the operations of the cannery in, first, the operation required when you can slices. A. Yes.

Q. And then, when we get through with that, we will go to the operation where you can sauce. Is that clear? A. Yes.

Q. Now, the apples—holding this diagram up so that the words "39 trimmers" are in the upper left corner, we are looking at the chart, the diagram from that angle, are we not? A. Yes.

Q. Now, the apples are dumped right outside of a point called the flume on that diagram, are they not? A. That is right.

Q. And then they are dumped into the flume?

A. Yes, they are elevated up to the flume and dumped into the water flume.

Q. Yes. Now, that flume carries water and runs down into the plant? A. Yes.

Q. It is really a conduit, isn't it?

A. Yes, it is a conveyor.

Q. A water conveyor? A. Right. [202]

Q. The apples come in this water, and on either side of the flume stand peelers?

(Testimony of Elmo Martini.)

A. No, on one side of the flume stand peelers.

Q. I see. Now, as you are looking at the chart now, would it be at the upper part of the words "13 peelers" or the bottom part?

A. No, the bottom part is where the peeler operators stay.

Q. Now, peelers are machines which are operated by peeler operators, is that right, by women?

A. Yes.

Q. How many peeler machines are there?

A. Thirteen.

Q. How many apples does each machine handle at one time?

A. Anywhere from 70 to 80 a minute.

Q. But at one given point of time?

A. Oh, two.

Q. A peeler has cups on it?

A. A peeler has four cups, and there are two apples fed to it at a time, two and two.

Q. They are fed to all four cups, right?

A. No, they are fed two cups at a time. The cups work this way, two of them come out while two of them are going in. These two go in and two others come out.

Q. I see. So that one peeler operator can handle the four cups? [203] A. Yes.

Q. Is that right? A. Yes.

Q. And what does she do, take them up with one apple in each hand, put them in the peeler cup, the machine takes it, and then what does it do?

(Testimony of Elmo Martini.)

A. Then the machine goes into what we call—it takes the apple in the cup, takes it in, and the cup has an upward movement, I believe. I don't know, I'm not sure whether the cup moves upward or whether the spike comes down and catches it, and then a knife goes around the apple—the apple is spinning, of course,—

Q. Yes.

A. This is a spindle, and the apple spins and the knife cuts the peel off, and at the same time, while the apple is spinning, a coring knife cuts the core out.

Q. Yes, and sometimes those coring knives don't operate properly, and the core remains in the apple?

A. Portions of it, yes.

Q. Sometimes a whole core will be in and have to be removed later on, right? A. Yes.

Q. All right. Now, after the apple comes out of the machine, does it—is it dumped by the machine, or does the operator take it out by hand, after it is peeled? [204]

A. No, it is dumped by the machine.

Q. It is peeled and cored; if the machine works properly, it is peeled and cored, dumped, and to the left of where it says "peelers" there is a runway or conveyor?

A. There is another—there's two, there are two conveyors.

Q. Are they water or belt conveyors?

A. One is belt and one is water.

(Testimony of Elmo Martini.)

Q. And are the apples dumped on either one of those?

A. No, sir, they are not, the apples are dumped on top, on top of the conveyor. There is a grate over the top of it, and on either side of it there is an opening, so that every apple—

Q. Yes?

A. —it is trimmed, at that point it is picked up, and then the grates—

Q. Who picks it up at that point?

A. The trimmers.

Q. The trimmers pick up each apple individually, right? A. Yes.

Q. They are standing back of the peelers, where it says "39 trimmers" here, is that right?

A. Yes.

Q. The apples come out of the peeling machines, roll down to this grate? A. Yes.

Q. Where the trimmers stand? [205]

A. Yes.

Q. The trimmers take up each apple, and what do they do?

A. They pick—they pick up each apple and they will trim off deep bruise marks, or they will trim off a worm stain, or they will trim off a piece of peeling.

Q. Imperfections or spots or things of that sort?

A. That's right.

Q. Well, will they trim out parts of cores that don't come out, things of that sort?

(Testimony of Elmo Martini.)

A. Yes, and we give the orders as to how we want apples trimmed; the floor ladies have that information at all times, just what we are making; actually, we don't have to tell them what we are making, but we may trim a little bit heavier sometimes than we do other times, depending on—

Q. You mean you make a deeper cut to take out imperfections at some times than others?

A. No, if we are making top fancies, the apples almost have to be perfect. There is no tolerance.

Q. Now, if you are not making top fancies, what are the other qualities you make?

A. We make a fancy and a standard—or, we refer to it mostly as choice.

Q. All right. Now, your standard is choice?

A. Yes.

Q. The other grade is fancy? [206]

A. Well, let's call it standard. That's the proper word.

Q. What do you call it?

A. I call it choice, but the Government calls it standard.

Q. All right. And what do you call the other qualities or grades you make? A. Fancy.

Q. I see. Do you make an extra fancy or top fancy? A. Yes, yes, we do.

Q. You do? A. Yes, we do.

Q. All right. So you make a top fancy, a fancy or a standard, is that right?

A. Maybe I should explain that a little bit, so everybody becomes acquainted with it.

(Testimony of Elmo Martini.)

Q. Surely.

A. A fancy, the grade fancy now has—the scoring is 86.

Q. What does that mean?

A. That means that the imperfections and so forth are counted and if—and then deducted from the good portions. I am not an expert at grading. I don't actually—don't know how, but nevertheless if your total score is 86 or better it becomes a fancy.

Now, we have some customers, one of them that is quite large that insists that we produce for them 94 and better, you see. [207]

Q. Yes. So it varies with—

A. With whomever you are dealing with. Now, if it is a Government grade, that is the grade, but it will not make the grades of certain customers.

Q. The grades vary according to your customers and your markets, right? A. Yes.

Q. And you pack all sorts of grades, is that right?

A. Yes. Now, at another point, some—a standard just can't be anything.

Q. A standard has to meet certain standards, that is what you are saying?

A. It certainly does, because we have a substandard. I don't know where the cut-off point is, but there is a substandard, and that must be sold, oh, along with dents and so forth.

Q. Now, dents can be sold—can be top quality or— A. That's right.

Q. —or any other quality, but as long as they

(Testimony of Elmo Martini.)

are dented, you can't sell them as a full product, is that right? A. Yes, that's right, or rusted.

Q. A good product, a perfect product. All right. Now, let's get back. The trimmers have these apples and they trim them; they use knives to do that, I take it? A. Yes.

Q. After they trim these apples, each one is individually [208] trimmed, what do they do, they drop it in the flume?

A. Yes, they drop it in the water flume.

Q. Now, where is the water flume with relation to this chart, which says "39 trimmers"?

A. The water flume is just before them.

Q. Between them and the peelers?

A. No, between the trim belt and the peeler. It is one—there are two conveyors, there is one conveyor immediately before them. That is where their trimmings and anything that they trim off the apples drop through these grates and the conveyor takes it down to the exhaust end of this line.

Q. All right. A. And just beyond that.

Q. Yes.

A. There is a water flume where the apples are dropped.

Q. Now, after they are trimmed then they are dropped in this water flume? A. Yes.

Q. Which is between the trimmers and peelers?

A. Yes.

Q. And it is carried to the point here where it is marked "Squirrel Cage"? A. Yes.

Q. What is the squirrel cage?

(Testimony of Elmo Martini.)

A. The squirrel cage is a washing machine. [209]

Q. What does it look like physically?

A. It is a series of rods on a cylindrical barrel, and inside of it there are heads, spray heads that will constantly spray the apples, and there is also a spiral, a stainless steel spiral in there that will bring the apples up to about midway, the sprays hit them at all times, and then they work through the squirrel cage. I would say that it is ten feet long.

Q. And what is the diameter of the thing?

A. Oh,—

Q. Approximately? A. Three feet.

Q. Now, does this revolve, this squirrel cage?

A. Yes.

Q. So the apples keep revolving like you say in a washing machine?

A. Keep revolving and working forward.

Q. I see. And the spray, is it just water or is it salt water? A. Oh, no, that is water.

Q. Just water? A. Yes.

Q. And that is designed to wash out all specks and particles that are hanging to the apples, is that right, clinging to the apples? A. Yes. [210]

Q. All right. Now, after it gets through the squirrel cage it gets to this point, just below that on the chart, called the inspection—

A. Belt.

Q. —belt, right? A. Yes.

Q. And there are inspectors who inspect the apples individually as they come down, right?

A. Yes.

(Testimony of Elmo Martini.)

Q. Then after it goes to the inspection belt—we are talking about slices now, are we not?

A. Yes.

Q. It goes over here to what, on the chart, are slicing units, which is a long table for slicing, right?

A. Yes.

Q. Before it gets there, there is a point where there are some additional trimmers, second trimmers, are there not, right here at this point on the slicing unit, on the chart, I am pointing to the right—in emergencies?

A. In emergencies only.

Q. Now, an emergency is what?

A. An emergency is where fruit will—where it is impossible for these trimmers, and these trimmers that you refer to as inspectors,—

Q. Yes. [211]

A. —cannot continue, complete the job fully; we put more trimmers on, as many as we can up here, to catch more—

Q. Is that in effect when the flow is probably too fast for them to handle? A. No, it is not.

Q. Is it because of the quality of the product?

A. Yes, that is correct.

Q. I see. With my pen, which I hand you, will you mark on this exhibit the place where these extra trimmers are when you use them?

A. It is not a good position, it is a makeshift position, Mr. Karasick.

Q. Yes, I appreciate that.

A. I am not sure of it, but it seems to me

(Testimony of Elmo Martini.)

that this conveyor goes up, and then drops off in this place here for a couple of people right at this point here.

Q. Yes.

Trial Examiner: Now, how are you marking that now?

The Witness: Well, I am marking it with a little zero.

Q. (By Mr. Karasick): These two zeroes, would you put trimmers just above them or alongside of them here? A. Well, extra trimmers.

Q. Extra trimmers. All right. Put that.

A. I don't know how you will ever check this, because we have torn it down. [212]

Q. Maybe I'll just take your word for it, Mr. Martini. A. You will have to.

Q. O.K., fine. Thank you.

Now, then it goes to—the apple, after the second trimmer,—if you do have second trimmers or extra trimmers as you said—goes to the slicing units?

A. Yes.

Q. What are the slicing units, Mr. Martini; machines that slice apples are they? A. Yes.

Q. How many machines? A. Nine.

Q. Nine? A. I think it is nine.

Q. All right. And what happens, they are operated by women, too, are they not? A. Yes.

Q. The women take these apples; how do they take them, one in each hand?

A. They take—yes, they should take one in each hand.

(Testimony of Elmo Martini.)

Q. And then what do they do with them?

A. We prefer them to do it that way. And then each woman has two spindles.

Q. Now, these are—

A. These are spindles that look very much like my finger, only [213] a little bit—they are quite small. They are only, I'd say, about a quarter inch, stainless steel spindle, and her job is to drop the apple with the core hole in it onto the spindle.

Q. Onto the spindle?

A. Onto the spindle. Below it again there are all of those things around apple machines which look like hands, so I will refer to it as a hand. It drops down on this hand, the hand works on an eccentric or a—well, it is an eccentric gear that will pull it back, and it feeds one apple at a time, and it goes back in here; in other words, if there are three or four apples stacked up here, it will just pull out and drop one apple and stop the other ones; and then there is another hand below that that shoves the apple that is on the spindle through a series of knives; we have some that will cut apples into 14 pieces, some that will cut them into 13, some that will cut them into 8, and so on down the line, depending on the size of the apple that is shoved on this machine, and the hand shoves them on through.

Q. Now, when the apple is sliced, what happens to the slices, they fall on a conveyor belt or table?

A. Last year they fell on a belt.

Q. On a belt? A. On a conveyor belt.

(Testimony of Elmo Martini.)

Q. All right. Now, that conveyor belt brought the slices to this inspection table which is on this chart, to the left and [214] just beneath the words "Slicing Units," right?

A. Brought them down to the end through a salt water bath, then it raises them, raises them up here to what we call a shaker screen.

Q. Now, where is the shaker screen?

A. And the shaker screen is just before this point, just before the inspection table.

Q. All right. Now, that is the shaker screen at the point on the chart which is marked "Conveyor," is it not? A. No.

Q. No? All right. A. Beyond there.

Q. Would you take my pen again, please, Mr. Martini, and indicate on the chart where the shaker screen is. A. The shaker screen is right here.

Q. Do you want something solid to write on?

A. No, I am fine here. I like to write on things like this.

Q. There is your shaker.

I see. So that it goes from the salt solution to the shaker? A. Yes.

Q. Which you have marked now—

A. To the—

Q. To the left of the inspection table, it then goes from the shaker, this shaker screen shakes these slices there—anyone [215] standing there as it is shaking? A. No, sir.

Q. It shakes them for what purpose, so little pieces drop out?

(Testimony of Elmo Martini.)

A. Yes, it shakes them to remove chips.

Q. I see. Then it goes on the inspection table and the inspectors again inspect these slices, right?

A. Yes.

Q. Then after that is a final inspection?

A. At this point.

Q. Yes.

A. Well, yes, it is the final inspection. We have at some time or another run into trouble trying to make our grades, we have put two women just beyond the inspection table, but they were not very satisfactory, not enough room to work.

Q. But, where it was necessary, you used that extra inspection?

A. Actually, for all concerned here, there is—that is the inspection or the trim table there.

Q. I see. And then when you are finished with inspection, the apples or the slices go where?

A. Go into a tank.

Q. Now, where is that tank shown on the chart?

A. The tank is shown on my chart here just north of the inspection table. [216]

Q. Now, north would be—

A. This is north here, of the plant.

Q. Would be to the right of this chart?

A. Yes.

Q. As you were looking at it? A. Yes.

Q. With the words "39 trimmers" and peelers at the top of the chart, facing those words, right?

A. Yes.

Q. All right. Is it shown there at all?

(Testimony of Elmo Martini.)

A. The tank?

Q. Yes.

A. Yes, right here, but——

Q. It is a round, it is a circle at the end of the point marked "Inspection Slices," right?

A. Yes.

Q. Now, what is that tank for, the slices are dumped in there? A. Yes.

Q. What is done with them?

A. They are dumped in there and then again—and then again the tank is a stainless steel tank with a false head on it. In other words, it has a perforated screen, let's say, about six or eight inches below the top of the tank. It also has there a gate where the apples can drop into the tank, so they drop in there and we add to it a—actually, this is a trade secret, but [217] I am going to tell you anyway—we add to it salt, rock salt, and when the tank is full we close the trapdoor and fill it with water.

Q. Now, the purpose of this is what, to purify, to blanch, or to what? A. No, that is——

Q. Or is that a trade secret? I don't want to ask you any trade secrets.

A. Yes, it is, but I will tell you anyway.

Q. I promise you I won't give it to the competition.

A. Well, there may be a competitor out in the audience.

Mr. Berke: Just a moment. If it is a trade secret and it affects competition, I——

(Testimony of Elmo Martini.)

Mr. Karasick: I am not going to press it.

Trial Examiner: I suggest we go off the record and see whether it is material. Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Q. (By Mr. Karasick): All right. Now, how long do they remain in the tank, or is that also a trade secret?

A. No, they remain in the tank at this point only for as long as it takes us to move that tank out of there.

Q. I see. Then you take this tank, and where does it go?

A. It goes any place we have to put it. There are eight of these tanks.

Q. Yes, but from—you have got the slices in this tank; [218] what is the next step in the operation?

A. Well, all right, then we should go on, I will have to tell you what happens here, that's all there is to it.

Q. That's what I want you to do.

Mr. Berke: Well, without telling the ingredients.

Mr. Karasick: No, he is going to tell us what the next step in the operation is. We don't want any—

The Witness: The next step in the operation is this—

Q. (By Mr. Karasick): Yes?

A. This tank theoretically should go under a vacuum bell.

(Testimony of Elmo Martini.)

Q. Yes.

A. A vacuum bell is a large, heavy metal bell affair that fits on a plate. We have—What do you call these things that raise them?

Mr. Berke: A hoist?

The Witness: A hoist, that will raise that tank, the bell off of the tank. Then we skid another one of these tanks that have been filled over here under there, drop the vacuum bell on it, put a 15-horsepower vacuum pump on it and pull a vacuum.

Q. (By Mr. Karasick): I see.

A. Now, that—I don't think I should have to tell you how much vacuum or how long.

Q. I won't ask you. All right. Now, after that, what do you do, what is the next step?

A. The next step is that we remove—again, when that tank [219] has been properly vacuumed, it should be removed from there and raised to the blanching tank, possibly ten feet above the floor.

Q. All right. Now, the vacuum bell you have talked about, there are two circles in about the approximate bottom center of the diagram marked "VB," those are the vacuum bells, is that right?

A. Yes, "VB."

Q. The tank is then removed, you say, from that point of "VB" to the rectangle marked "Blanch"?

A. Yes.

Q. On the diagram, right? What is done there?

A. We take this tank—it sits up on a cradle in its erect position, and there again we have a hoist that will lift it over and turn it on its side and

(Testimony of Elmo Martini.)

dump the sliced apples into a large blanching tank.

Q. Now, that is a tank which has a blanching solution?

A. No, it is a tank which has water in it.

Q. Water?

A. Boiling water. We run this at possibly 212 all the time.

Q. I see. Then after the apples are blanched, what is done with them?

A. Then from that point they are blanched, and there is a stainless steel chain that takes them—or, a stainless steel conveyor belt that takes them on through there to the end here where they hit—that is at the right of this diagram, there is [220] a cross belt that takes those apples into the filling machines.

Q. And that is marked "Filling"?

A. Filler.

Q. To the right and below "Blanch" on the diagram, right? A. Yes.

Q. All right. They are filled into cans, the apples, the slices are put into cans?

A. Either No. 10's or—if this happens to be our No. 2 line—No. 10 line is over on this other side.

Q. Then what?

A. Then they go from this point, they get onto another conveyor and they go through a final cook. It is a long, 90-foot cooker, open trough; still there we have water at 212 degrees. The cans are timed from one end to the other in perfect timing; different apples will take different times of cook.

(Testimony of Elmo Martini.)

Q. May I ask you one thing at this point: The apples are in the cans, now sliced—

A. Sealed in the can.

Q. It is sealed? All right. A. Yes.

Q. I see. And it goes through this cooking process? A. Yes.

Q. And that is where the cooking tank is marked to the right of the diagram, and going at right angles across it? A. Yes. [221]

Q. All right. Then what happens?

A. Then they hit another conveyor at the other end and come back through, come back toward us on a cooling—into the cooling tank.

Q. And that parallels the cooking tank on this diagram? A. Yes, yes.

Q. Then what happens to it?

A. Then from there they come up to the south end of this—that would be the west end of the plant, and they hit a conveyor that brings them to the cannery warehouse.

Q. Where they are labeled and put in the cases, is that right?

A. Yes, they can either go to one warehouse or the other, it doesn't make any difference. We can run either direction.

Q. All right.

A. With a few adjustments, of course.

Q. Yes. Now—Thank you, Mr. Martini. Let's get now to sauce. That takes care of the slices, does it not?

(Testimony of Elmo Martini.)

A. Yes. Now, I'd like to explain a little bit more about this.

Q. Surely.

A. Now, we have gone through here theoretically with one tank, what one tank will do. We have eight such tanks, plus the two vacuum bells, and all of the time that this plant is running on slices there are so-called bells that clutter this entire area.

Q. Yes; now, I didn't ask you about this.

A. No, you didn't, but I want to point it out.

Q. You will have ample opportunity. Let's go to sauce.

Mr. Berke: Just a moment. I think that is part of the process.

Mr. Karasick: That is not part of the process.

The Witness: Yes, it is.

Trial Examiner: Don't argue. You can bring it out later in your examination.

Q. (By Mr. Karasick): Now, let's go to sauce, Mr. Martini. A. O.K.

Q. The apples are dumped in the flume of water again, are they not — let's start at the upper left corner of the chart or diagram. A. Yes.

Q. They go through the peeling operation?

A. Yes.

Q. Same trimming operation?

A. Yes.

Q. Same squirrel cage? A. Yes.

Q. The first inspection belt or table?

A. Let's see where we are. Yes.

Q. Now, then after they have gotten to the in-

(Testimony of Elmo Martini.)

spection belt or table, instead of going to the slicing unit, they go over to where? [223]

A. They go over to an inspection.

Q. Another inspection table, immediately following that? A. Yes.

Q. Over a conveyor belt system, right?

A. Yes, right.

Q. Now, at this point are they whole apples, except for the core and the peelings taken off?

A. Yes. Let me see. Wait a minute. At this point they are whole apples, at this point they are not.

Mr. Berke: Would you please indicate what "at this point" is?

Mr. Karasick: Yes.

Trial Examiner: Where is that?

Q. (By Mr. Karasick): At the point of the first inspection table, and the second inspection, which is marked "Inspection Sauce" on the chart?

A. There at that point they have already gone—

Q. Pardon me. Wait a minute. Would you hold it a minute. A. Oh.

Q. Now, they are at the second inspection belt and they are individually inspected, are they not?

A. That's correct.

Q. Then what happens to the apples?

A. Individually inspected and trimmed.

Q. And trimmed? [224] A. Yes.

Q. So that any further imperfection is taken off, is that right?

(Testimony of Elmo Martini.)

A. That's correct. I only need one inspector, I don't need eight, you see, if I could change that a little bit. I don't know how these things have ever been called inspection belts. They are trim belts. It should be a final inspection and trim, that is what it is.

Q. All right. So, after the squirrel cage, instead of what is here marked "Inspection Belt," you would call that a trim belt, is that right?

A. Yes, it is a final trim belt.

Q. All right. Then it goes over a conveyor to the place where it is marked "Inspection Sauce" on the chart, right? A. Yes.

Q. There the apple is inspected again?

A. Yes.

Q. Then what happens to it?

A. Then it goes into the cooker.

Q. Now, where is the cooker on the chart, is it shown here?

A. Let's see, inspection belt—I'm just trying to think where that cooker is.

Q. Is there a screener that is—

A. That is a pulper?

Q. A pulper? [225] A. Yes.

Q. What happens to the apple physically after it reaches this inspection sauce place, the second inspection?

A. It goes through what we call a—What do they call those things now? It's a chopper, anyway.

Q. It chops it up in little pieces?

A. Chops them, yes.

(Testimony of Elmo Martini.)

Q. Yes, all right. It is a machine?

A. Yes.

Q. I see. And that is located where in relation to inspection sauce here?

A. Just prior to it.

Q. Just before the sauce?

A. Yes, it is—actually, at this point, and this bell goes running that way.

Trial Examiner: "This" pointing—

The Witness: This pointing to the lower portion.

Q. (By Mr. Karasick): Let me ask you a question about it, it will be easier. A. All right.

Q. The chopping machine is located under the point on the chart marked "Inspection Belt" and the point marked "Inspection Sauce," is it not?

A. That's right.

Q. All right. It is chopped up, it comes to "Inspection [226] Sauce" and is inspected there, right?

A. Yes.

Q. Then what happens to these chopped up pieces?

A. They flow on through the belt, over the belt.

Q. Yes.

A. To the top—to the other end of the conveyor.

Q. Yes.

A. Thence around through the cooker.

Q. Now, as they go through that process, is there a screener, before they get to the cooker?

A. No.

Q. There is no screener? A. There is not.

(Testimony of Elmo Martini.)

Q. I see. There was not in 1954?

A. No, sir.

Q. The apples then, or these pieces, are then cooked? A. Yes.

Q. Is it shown in—it is not the same cooking tank as used for— A. No, sir.

Q. —for slices, is it? A. No.

Q. It is another tank? A. That's right.

Q. And where is that located in relation to the cooking tank [227] on the diagram for slices?

A. It is located—it was located parallel to the inspection belt up there.

Q. The "Inspection Sauce"? A. Yes.

Q. Marked on the diagram? A. Yes.

Q. I see. And to the right of it, would it be, on the diagram? A. To the right of it.

Q. Where there is a rectangle that is unmarked on the diagram? A. Yes.

Q. That would be the cooking table?

A. Yes.

Trial Examiner: Mr. Karasick, when you say "to the right"—

Mr. Karasick: Well, I have already indicated how he has held the chart, Mr. Examiner. You see, if you hold the chart so that the words "39 Trimmers" appear in the upper left corner, then all this becomes clear.

Trial Examiner: Fine.

Mr. Karasick: Thank you.

Q. (By Mr. Karasick): Now, there are speck-

(Testimony of Elmo Martini.)

ers that are used in the applesauce process, are there not?

A. Some of us use them, some do not. [228]

Q. Well, you used speckers during 1954, did you not? A. Yes, we did.

Q. Now, where do you use them, before or after the sauce is cooked?

A. After the sauce is cooked.

Q. All right. Now, after the sauce in the cooking tank is cooked? A. Yes.

Q. Then where does it go, does it flow out in a stream of some sort?

A. No, it flows out into what we call a pulper.

Q. Now, where is the pulper located?

A. The pulper is directly beyond the cooker, attached to the cooker. It is attached, it is a part of the cooker.

Q. It is a part of the cooker?

A. Yes, it is.

Q. And what does the pulper do?

A. The pulper is a machine that will take the cooked apples—and when they come out of there they are still in their sliced form, most of them do not break up like a homemade applesauce, you have seen that.

Q. Yes.

A. It will stay real chunky and large. This pulper—we have different sized holes in it of different porosity; we will say if we want a granular, real heavy granular sauce, we will [229] use larger holes in the pulping screen, which is a cylindrical

(Testimony of Elmo Martini.)

screen with two paddles, or there are four paddles run at an angle inside there that keep turning. In fact, it takes 20-horsepower in order to turn it, and it keeps feeding the sauce, feeds the sauce through the screen, and then out from there, flowing onto the specking table.

Q. Now, you say there are different sized screens? A. Yes.

Q. What diameters are they, do they vary from, and from how coarse to how fine?

A. Oh, possibly—I don't know. We must have any size that you want.

Q. Well, what size did you use there?

A. Do I use?

Q. Yes. A. I believe I use a—use——

Q. Use one or more than one size screen?

A. No, we just have the one.

Q. I see. What is the diameter?

A. I am not sure of the diameter of the holes.

Q. It is a fairly fine mesh?

A. No, it is not.

Q. It is not?

A. No. We are not—You get commercial applesauce that comes in this semi-liquid or semi-solid form and it is not a fine [230] mesh, no.

Q. Would there be lumps?

A. Well, it has—it is a very granular sauce that we produce there. I would say that there are --that it's been probably—from our holes in the screen, it will go to the large size.

Q. For apple screens, that is?

A. Yes.

(Testimony of Elmo Martini.)

Q. But you don't know what the diameter is?

A. No, I do not, sir.

Q. All right. Now, after the sauce is pulped and goes through this pulper, where does it go?

A. It goes through the pulper onto the speck table.

Q. Now, the speck table consists of a table in which the sauce flows, or a belt flows, right?

A. Well, it is a stainless steel trough, is what it is.

Q. Trough? All right. And there are speckers located there, right? A. Yes.

Q. And what do they do?

A. They have with them a little tube—

Q. Pneumatic hose?

A. Yes, and we use what we—actually what we use there is a milking machine, just like a dairy would use, and it forms a vacuum and takes and pulls, thus creating a vacuum at the end of [231] the little tube they have in their hand, and should they see a dark spot or a seed cell or something like that, they will try to pick it up.

Q. So the speckers are really another inspection process to pick up anything that has come through in the sauce, right?

A. Yes. Do you want my personal opinion on it?

Q. No, I am asking you the process.

A. Oh.

Q. Now then, the sauce; after the specking process, Mr. Martini, what happens to the sauce?

(Testimony of Elmo Martini.)

A. After the specking table it flows into a tank, a holding tank, possibly 300 gallons.

Q. Then what is done with it there?

A. Then from the holding tank it goes through—

Q. Now, where is that holding tank? Is it shown on the diagram?

A. No, it isn't shown here. The holding tank I would say—

Q. Let me hold this for you.

A. Sure you can. I will put it on there.

Q. Would you, please. Do you have room?

A. There is your specker, right here.

Q. Would you mark that "Specker."

A. And then—

Q. Let's see, the holding tank was—

A. Right here, holding tank. [232]

Q. You have marked that "HT"? A. Yes.

Q. It is a circle just below the square which is the specker, the square or the circle?

A. No, the specker is the square one.

Q. The specker is the square just below the place marked "Blanch" on the diagram and just below that is a circle to the left of which you put the initials "HT"? A. Yes, sir. Yes.

Q. Meaning holding tank, right? A. Yes.

Q. Fine. Now, after the holding tank, the sauce isn't in cans yet, is it? A. No, it is not.

Q. Then what is done with it?

A. After the holding tank, it is taken by a pump and it goes through a heat exchange, in case of a

(Testimony of Elmo Martini.)

temperature drop, a fully automatic exchanger, that will raise the temperature up to the desired temperature, the temperature that we want our fill at. It is called fill temperature.

Q. I see. This is a technical canning process then, part of the process, right? A. Yes.

Q. All right. Then what happens to it?

A. Then, after—of course, after flowing through the heat exchanger—— [233]

Q. Now, where is the heat exchanger? You have made a small—would you put "HE" after that and put an arrow to it, a small circle just below where you have already marked "HT" for holding tank, right? A. Yes.

Q. And that is the heat exchanger?

A. Yes.

Q. All right. Then where does it go from the heat exchanger?

A. From the heat exchanger it goes to the filling machine.

Q. Is that marked?

A. Well, there is your closing machine, and your filling machine is just before it.

Q. I see. So that it is filled in a machine just before the part marked "Closing" at three places at the bottom of this chart, right?

A. There either should be a place before them, or they should be moved down.

Q. All right. Well, let's not bother to try to get those on the chart because we can't, but the record shows that.

(Testimony of Elmo Martini.)

Then after they are filled, they are put on machines which close the cans, the cans are then conveyed, I suppose, to the warehouse?

A. Then the cans are conveyed to the—then they move over a conveyor to the closing machines and the lids are put on, and sealed. [234]

Q. And then the same process?

A. And then from there they go out—not through a hot water bath, no. These go through a cooler, these are all ready to—this is edible at this time. It is fully cooked and—

Q. I see.

A. The fill temperature we hope is correct, and now you are cooling them down immediately.

Q. I see. And is the cooling tank the same one that you use for the slice operation, or is it a different one?

A. No, last year it was the same one.

Q. Same one? A. Yes.

Q. And after they are cooled, is that the end of the process, excepting for labeling?

A. And then after they are cooled, we either stack them bright—By stacking them bright I mean filling up a pallet full of cans, or we will put them in bright, in cases, and stack them in anticipation of future orders, maybe under somebody else's label, or we will label them under our own label. You see, we can do various things.

Q. Now, as you were set up in 1954, your operation was so designed that you would either can sauce or can slices, is that right?

(Testimony of Elmo Martini.)

A. That's right.

Q. You didn't carry on both operations simultaneously? [235] A. No. [236]

* * * * *

Mr. Karasick: Mr. Examiner, at my request Mr. Berke has been good enough to check the Respondent's record with respect to some of the requests made this morning and has informed me as to the case weight of various products which I would like to read into the record as a stipulation between Counsel for the General Counsel and Counsel for the Respondent, as follows: The case weight of slices in No. 2 cans is 38 pounds; No. 10 cans, 47 pounds.

Trial Examiner: What is the 10 pounds, was it—

Mr. Karasick: No. 2, 38 pounds; No. 10, 47 pounds. Sauce in No. 303 can, $3\frac{1}{2}$ pounds; in 8-ounce, 16 pounds; in No. 10 cans, 46 pounds.

The figures previously given with respect to the amount of product canned by the co-op, namely, 80,587 cases, of which 65,322 were 303, and the balance of 15,265 were 8-ounce—Did you get it?

Trial Examiner: I missed it on account of traffic noise. Maybe the Reporter will read it to me, starting with 80 thousand something.

(Statement read.)

Mr. Karasick: As being the number of cases canned for the Respondent by the co-op cannery during 1954, are correct figures [239] in each instance.

(Testimony of Elmo Martini.)

Mr. Berke: So stipulate.

* * * * *

Mr. Karasick: It is my understanding that the co-op, the full name of the co-op is Sebastopol Co-operative Cannery.

Mr. Berke: That's correct.

* * * * *

Mr. Karasick: Thank you. Now, it is further stipulated and agreed that the following employees, who had never worked [240] for the Respondent before, were hired on the dates noted in each instance hereafter, during the 1954 season: Alice Bollinger, October 27th; Sadie Elliott, November 6th; Imogene B. Geasland, October 23rd; Marguerite Hayes, October 20th; Gladys Henningsen, October 27th; Molly Hoffman, October 23rd; Pearl Humes, October 30; Edna Jobe, October 22; Hilda Littleton, October 25; Norma Morian, October 25,—

Mr. Berke: Hold it.

Mr. Karasick: Hold that. Strike the name Norma Morian.

Muriel Nord, October 25; Martha Peters, October 20; Katherine Poncelet, October 22nd, and Lester Stanley, October 29th.

Is that a correct statement and will you so stipulate?

Mr. Berke: I will stipulate to it with one addition, Mr. Karasick, that Imogene B. Geasland, who was hired on October 23rd, had worked two days and that was the extent of her employment.

(Testimony of Elmo Martini.)

Mr. Karasick: If you so represent to me—

Mr. Berke: Yes.

Mr. Karasick: —I will so stipulate.

Mr. Berke: That's taken from the company records.

Mr. Karasick: I will stipulate on the basis of that representation. [241]

* * * * *

Q. (By Mr. Karasick): Mr. Martini, do you remember a meeting of the growers which took place on or about the 28th of June of this year?

A. Yes, sir.

Q. And you at that meeting made certain statements as to the number of tons of apples, number of cases that come from number of tons of apples, namely,—Does this recall it to your mind?—you said that 700 tons of apples would produce 40,000 cases of finished product.

A. I said that 700 tons of apples could approximately produce that.

Q. That's all that I am asking, I am not asking for exact [242] figures, but this is a rough average of what that would produce, right? A. Yes.

Q. That would be approximately 57 cases per ton, translated into per ton figures, right?

A. Yes.

* * * * *

Cross Examination

Q. (By Mr. Berke): Mr. Martini, you will recall yesterday Roy Rhodes testified concerning a conversation between himself, Angelo Bertolucci

(Testimony of Elmo Martini.)

and you, that was said to have taken place on July 28th, 1954, at the office of Sebastopol Apple Growers [243] Union; do you recall that? A. Yes, sir.

Q. Will you relate for us—Well, strike that.

During the course of this conversation, is it correct that just the three of you were present?

A. In my office, yes.

Q. Yes. And it was in your own private office out at the plant, or where was it?

A. In my own private office.

Q. And had you expected Mr. Rhodes and Mr. Bertolucci that day?

A. No, I wasn't expecting them.

Q. Do you know about what time of the day it was that they came in?

A. No, I don't recall the time.

Q. It was sometime during the morning?

A. It seems to me that it was, yes.

Q. Yes. And who opened the conversation?

A. When I first saw them?

Q. Yes.

A. I possibly did when I—I think Mr. Rhodes was correct in what he stated.

Q. What did you say?

A. Exactly what he—

Q. Well, use that language he said you used?

A. I said, "What the hell are you doing here, Roy and Ange?" because I do know them quite well.

Q. Now, did you say that with disgust or did you have a big smile on your face when you said that?

(Testimony of Elmo Martini.)

Mr. Karasick: Just a moment, just a moment. The witness' subjective reactions I think are not important, and I may say for Mr. Berke's purposes we are making no contention about the so-called bad language used by Mr. Martini.

Mr. Berke: Well, I understood it was background to show anti-union animus.

Trial Examiner: Are you contending now—

Mr. Berke: If you are not contending that isn't background for that—

Mr. Karasick: I am contending the whole incident is background for showing anti-union animus, of course.

Trial Examiner: Well, I will permit the question then.

Q. (By Mr. Berke): Do you remember the question? A. No.

Mr. Karasick: I object to the question again then on the further ground, before he leads the witness into—

Mr. Berke: This is cross examination.

Mr. Karasick: Just a moment. It is cross examination by Respondent's Counsel.

Trial Examiner: Mr. Berke, you have had enough experience with our proceedings to know that when Counsel who is representing [245] the party or one of the supervisors—that leading questions should be avoided if you want to have any weight attached to the testimony.

Mr. Berke: Well, he was called, sir, under Rule 43(b), and I'd like to read the rule.

(Testimony of Elmo Martini.)

Trial Examiner: That's all right. I know what it is. I am just telling you what weight I give to testimony on leading questions.

Mr. Berke: Well, I understand that, but I just want to be clear that I have a right to cross examine.

Q. (By Mr. Berke): When you said that to Mr. Bertolucci, will you tell us whether you said that with a smile or not.

Mr. Karasick: Object to the question.

Trial Examiner: I will permit it.

A. Yes, I said it smilingly, as I know the both of them very, very well.

Q. (By Mr. Berke): I understood you to say that you have known both Mr. Rhodes and Mr. Bertolucci quite well. How long have you known them?

A. Oh, Mr. Rhodes was Business Agent at one of my former plants; at the same time Mr. Bertolucci was the President of the Teamsters. In fact, the plant was right here in Santa Rosa, quite a large winery, so I have known them since, oh, I'd say '46 or '7, somewhere along in there.

Q. Do I understand then that you dealt with both of these gentlemen on Union matters in past years? [246] A. Yes.

Mr. Karasick: I object. All right, let it go, but I will point out that these are leading and suggestive questions on a point which Counsel apparently feels is critical enough to go into.

Trial Examiner: Proceed.

Q. (By Mr. Berke): And what more was said

(Testimony of Elmo Martini.)

in that conversation that morning, on July the 28th, will you tell us and identify who was speaking?

A. In my private office?

Q. Yes.

A. Well, as I recall the conversation, Mr. Rhodes mentioned to me that he had some Union members in my plant and that he wanted to go into the plant and sign up the rest of them, and then sign a contract with them. Of course I refused admission to the plant on my time. I told him that he could do whatever he wanted outside of the premises, but not to go in and sign my people up in the plant where they were working. Then he—we generally discussed the topic, and he told me at that time that he didn't want any more money than what we were paying our people. He said all he wanted was a contract, and he wanted some Union dues from my employees. I smiled to that, and then we went on—

Mr. Karasick: Pardon me, what was the remark?

(Partial answer read.) [247]

A. (Continuing): —and we went on and I believe Mr. Rhodes offered to buy me a coke or a drink of some kind up at the corner grocer's.

Q. (By Mr. Berke): Who suggested your going to get the coke at the corner grocery store?

A. I am sure that Mr. Rhodes did.

Q. And did the three of you then go out?

A. Yes.

(Testimony of Elmo Martini.)

Q. And how far away was this corner store that you went to with relation to the plant?

A. Oh, a hundred yards.

Q. And—

A. Possibly a hundred and fifty.

Q. And did you walk or drive over there?

A. No, we drove over there.

Q. The three of you together? A. Yes.

Q. And did you have any conversation as you drove over?

A. No, just social conversation.

Q. You didn't discuss anything about the Union, I take it? A. No.

Q. When you got into the store, did you have your cokes? A. Yes.

Q. And was there any conversation there?

A. Social again, because there was several other people in [248] the store and thereabouts.

Q. And did the three of you then return to the plant after you had your cokes, or what happened?

A. No, no, I had my coke and went back to my office.

Q. Now, there's been some reference made here about a raise; did you get a phone call from Mr. Rhodes sometime after that visit? A. Yes.

Q. And what was the conversation—Strike that.

First, do you remember how long after the visit it was that he called you? A. No, I do not.

Q. Was it a number of days or a week, can you give us an approximation?

(Testimony of Elmo Martini.)

A. Oh, it seems to me like it might have been a week or two.

Q. And can you tell us what was said in that conversation?

A. I can remember one part of the conversation. He asked me again if I thought the proposition he made to me over, and he—let's see, he asked me—I'm sure that he asked me if I had given my people a raise, to which I answered yes, and that's about the extent of the conversation as I remember. [249]
* * * * *

Q. Now, do you recall whether, when you put this increase into effect, it was before or after Mr. Rhodes was at your office? A. It was before.

Q. Now, Mr. Martini, you were asked yesterday by Mr. Karasick whether you recalled your employees by postcard, and I believe your answer was yes; is that correct?

A. Yes, that's what I said, yes.

Q. Now, will you please state your recruitment practice in 1954, how you recruited your employees?

A. Yes. We open up our office and take applications from workers, then a week or so before we plan to start the plant up we review applicants, look over the applications and pick from [255] those, again choosing those that we want to start with; then when we know definitely the beginning of the first shift, we send cards out to a picked group, shortly before.

Q. Now, was that the practice last year, 1954?

A. Yes, sir.

(Testimony of Elmo Martini.)

Q. About how long before the season begins do you begin taking applications?

A. I would estimate three, four weeks before.

Q. And would you say then after you picked the people that you wanted, you send out postcards to them, is that what I understood you to say?

A. Yes.

Q. All right. Is that the reference you had to the postcard yesterday? A. Yes, sir.

Mr. Karasick: Object.

Q. (By Mr. Berke): Do you send out—

Mr. Karasick: Just a moment. Object, and move to strike the answer.

Trial Examiner: Overruled. It is in now.

Q. (By Mr. Berke): Did you last year send out postcards to employees who had worked in the preceding season, from any lists of such employees?

A. No, sir.

Q. Did you telephone any such employees that worked for [256] previous seasons and ask them to come to work in 1954?

A. Not to my knowledge.

Q. From a list of the preceding season?

A. Not to my knowledge.

Q. Now, with reference to the discharge of Mrs. Dickerson, did I understand you correctly to say that she was discharged for plugging or decorating an apple, or whatever the term is?

A. Yes, sir.

Q. I show you an object, Mr. Martini, and ask you if you can tell us what that is.

(Testimony of Elmo Martini.)

A. I would call it a paring knife.

Q. And who uses a paring knife in your operations?

Trial Examiner: I am just wondering if that isn't a peeler.

Mr. Berke: Well, they call it a paring knife and I think we ought to take their term.

Trial Examiner: Well, for the record, I'd like to have a description of it so it isn't confused with the ordinary straight-blade knife.

The Witness: Why don't you refer to it as an apple paring knife?

Trial Examiner: All right.

Q. (By Mr. Berke): All right. Can you describe it for the record, Mr. Martini?

A. Well, it's a half-round object with a blade at the high [257] point of the bend.

Trial Examiner: That is, the outside curve?

The Witness: The outside curve of it.

Q. (By Mr. Berke): Does it have a wooden handle on it? A. Yes.

Q. Now, the Trial Examiner has made a reference here to peelers; is there a difference between that and the peeler, in your operations?

A. Yes, sir.

Q. Does a peeler look anything like that knife you hold in your hand? A. No.

Q. What is a peeler, if you will describe it again for us, please?

A. Well, a peeler is a power machine that will peel and core apples that have been set on it, on

(Testimony of Elmo Martini.)

the cup that holds the apple and move it from place to place.

Q. Is it power-operated, Mr. Martini?

A. Yes, sir.

Q. And the knife you hold in your hand, that is used manually? A. Yes, sir.

Q. Some individual holds it in her hand and uses it, is that correct?

A. That's right, that's right.

Q. Mr. Martini, this object I hold in my hand, will you for [258] the purpose of the record state what it is?

A. It is a peeled and bruised and cored apple.

Q. What type of an apple is it?

A. I'd say that it is a Gravenstein; in fact, I know that it is a Gravenstein.

Q. Now, what cored and peeled this apple that I hold in my hand?

A. The power machine.

Q. And this is the way it was cored and peeled during your operations last year? A. Yes, sir.

Q. I note that at each end of the core hole there is apparently still some green peel on there?

A. Yes.

Q. When the apple comes off the peeler in that fashion, what is done with it?

A. Then it drops off onto a skid plate that goes to where the girls, the trimmers are standing in position, and they pick up each individual apple and peel off of the apple any portion of skin that

(Testimony of Elmo Martini.)

is on there, any deep bruised tissue, and any other defect that might be there.

Q. Now, in performing that operation, what does the trimmer use? A. Uses this knife.

Trial Examiner: That you have in your hand?

Q. (By Mr. Berke): Yes, that paring knife that you have just testified about? A. Yes.

Q. Now, normally, is that the way the apple comes off the peeler, as you have it there in your hand?

A. Yes, the great majority of them; occasionally there are machines—and a machine will sometimes skip, it will sometimes slip, the forks will slip if the apple happens to be soft, but let us say that as a general run of apples they come off in this manner, very few that do not.

Q. All right. Is it correct that this apple has one core hole in it? A. Yes; yes, sir.

Q. Through what appears to be the center of the apple, is that correct? A. That's correct.

Q. Now, I show you another apple, Mr. Martini, which apparently has two holes in it and something in one of the holes. Will you describe for the record the condition of that apple, please?

A. This apple has—it is peeled and cored by machine. By some mischief, another hole is bored onto the side and a plug, a core, is shoved back into the hole that was bored.

Mr. Karasick: I move to strike the witness' characterization "by some mischief," as being volunteered and not responsive. [260]

(Testimony of Elmo Martini.)

Trial Examiner: Well, I will sustain that objection.

Mr. Karasick: If Mr. Martini testified to his mischief, fine, but otherwise no.

Q. (By Mr. Berke): You brought both those apples in at my request, didn't you, Mr. Martini?

A. Yes, sir.

Q. And one of the holes in this apple that I showed you, you know was made by what?

A. By a machine.

Q. And the other hole was made by what?

A. By this coring knife.

Q. And who did that?

Trial Examiner: When you say "this coring knife," that is the same thing as a peeling knife?

The Witness: I should say by a coring knife of this type.

Q. (By Mr. Berke): Who made that second hole with that knife? A. This one?

Q. Yes. A. This one?

Q. The one on this particular apple, yes.

A. I think Mr. Duckworth made it.

Q. All right. Did he do that at your request?

A. Yes, sir.

Q. All right. Now, I show you another object I hold in my [261] hand and ask you what that is.

A. That is the core of an apple.

Q. And is that the core that comes out after the peeler or power-operated machine makes the core hole? A. Yes.

Q. And tell us whether or not it was—the nature

(Testimony of Elmo Martini.)
of what happened to the apple as that led to Mrs. Dickerson's discharge, that was told to you by your supervisors.

Mr. Karasick: Now, just a moment.

Trial Examiner: No objection?

Mr. Karasick: No.

Q. (By Mr. Berke): Do you understand my question? A. No, I don't, Mr. Berke.

Q. Did your supervisors, or any of your supervisors tell you what Mrs. Dickerson did to the apple? A. Yes.

Q. Who was it that told you?

A. Mr. Duckworth told me.

Q. And what did he tell you was done to it?

A. He told me that a core was being pushed at the opposite axis of the apple or the opposite—in the opposite direction that a core comes out; in other words, a hole was dug in, and he fully explained it, just what was happening. In fact, he showed me one of the apples.

Q. In fact he what? [262]

A. He showed me one of the apples.

Q. And when he showed it to you, was it in the same situation as the apple you hold there in your hand? A. Yes, yes.

Q. Now, tell us whether or not, Mr. Martini, your company in its operations endeavors to get all it can out of each apple?

A. It certainly does.

Q. Does that have an economic bearing on your operations? A. Why, certainly.

(Testimony of Elmo Martini.)

Q. Now, when a second hole is put into an apple, I suppose it is obvious, but I will ask the question anyway, does it result in getting less out of that apple than you otherwise would? A. Yes.

Q. Now, assuming at the time you were slicing apples what effect would a second hole have upon slices? [263]

* * * * *

Q. (By Mr. Berke): Go ahead, Mr. Martini.

A. Well, in the case of slicing this apple you can see that—these knives that slice apples now run down through the apple in this method.

Q. Describe it for the record, what you mean by "this method."

A. Slice the apple this way.

Trial Examiner: In a vertical fashion?

The Witness: In a vertical fashion, and let's say there are fourteen slices that will cut out of this apple. I would almost say that this apple will make twelve slices. These—there will be possibly six of these slices on either side of this apple, which is 50 percent of the apple; that will not make a No. 1 sliced apple. The slices must be full. We knock all the chips, we take the chips out by either hand-picking or by a shaker screen, and naturally these apples, these smaller slices, either go through the shaker screen if they are small enough, or they will go on over the belt, and they will be [264] picked out by women along the final inspection and thrown into the peeling and core bin.

(Testimony of Elmo Martini.)

Q. (By Mr. Berke): Now, if they go through the shaker screen, what happens to them?

A. If they go through the shaker screen, they are picked up, and they go through into the peeling and core bin.

Q. And what happens there?

A. Then those apples, whatever is in there, is either sold for vinegar stock, that is, we sell them to vinegar manufacturers, they grind them and press them and make vinegar out of it, or we will take them and grind them ourselves and make them —make it into concentrate.

Q. Now, I think you testified under examination by Mr. Karasick to the effect that the core plugged back into the apple has upon the product. Will you tell us just what that is again?

Trial Examiner: Excuse me. I thought you were going to inquire about those slices, both slices and sauce.

Mr. Berke: Yes, I am going to sauce when I finish this; what happens in connection with slices when a core is plugged back into the apple is what I am getting at.

The Witness: Well, a portion that—that core could go beyond the shaker screen onto the final belt, and sometimes when we are running at a fast rate of speed the apples are somewhat deep, up to five and six inches deep, and a core could [265] get by and get into your finished product in the case of slices.

(Testimony of Elmo Martini.)

Q. (By Mr. Berke): If that happened, would it have an economic effect on your operations?

A. Yes.

* * * * *

Q. (By Mr. Berke): Now, Mr. Martini, taking that same apple [266] in that same condition, will you tell us what would happen if you were running sauce, applesauce at the time, let's say you were running fancy applesauce?

Mr. Karasick: Object. Let's say they were running applesauce that they were running in 1954, and until that is established I don't think it is relevant.

Trial Examiner: You accept the suggestion?

Mr. Berke: No, I don't. I will get the effect on both sauce—

Mr. Karasick: I press the objection, Mr. Examiner.

Trial Examiner: In view of the testimony that only one screen is used, I fail to see any basis for objection. I can't see that the product would be any different.

Mr. Karasick: Counsel seems to feel so, Mr. Examiner. I take it that he has a reason for doing so. The only relevant question for determination at this time is what happened at a particular point of time in 1954 when a certain apple was, assertedly, plugged or decorated. Now, unless they can show what was going on and being processed at that time, the rest is irrelevant and immaterial.

Trial Examiner: Unless it is shown that there was a difference in the method of proceeding in

(Testimony of Elmo Martini.)

1954-'3 and '54, I will just have to assume it was the same.

Mr. Karasick: No, perhaps—maybe I don't make myself clear. I am not sure, this might be semantic. Counsel is now [267] asking whether fancy—what would happen if fancy sauce was packed. You remember Mr. Martini talked about various grades that could be packed. The only question in issue here is what happened at a particular point of time when Mrs. Dickerson assertedly did something to an apple; the sauce that was being packed at that time is determinative of what the problem is, not the sauce that was packed at some other time. Now, unless they are prepared to show that fancy sauce was packed, then this is not a proper question.

Trial Examiner: I think I see what you are driving at.

Mr. Berke: Yes, let me ask General Counsel's representative, does he contend that because perhaps of fortuitous circumstances these particular apples involving Mrs. Dickerson didn't affect the pack on that particular day, that therefore the company engaged in an unfair labor practice in discharging her? I am interested in knowing General Counsel's theory, that we are groping in the dark on here otherwise.

Trial Examiner: Well, I see the basis for the objection, but until it is known exactly what was packed, I will permit Mr. Berke to cover the field.

Mr. Berke: All right, thank you. I will withdraw

(Testimony of Elmo Martini.)

that question and first ask a couple of preliminary questions.

Q. (By Mr. Berke): You testified in 1954 you packed both fancy and what you call standard or choice applesauce, is that correct? [268]

A. That's correct.

Q. Now, what is the difference between fancy and standard applesauce?

A. Our fancy applesauce as a general rule is a—it's a little bit thicker, not quite as—it doesn't run to a liquid type substance. It has less than 5 percent defects of any type, whether it should be a seed cell or a piece of—a piece of seed or a piece of skin. Mind you, there are some, a certain tolerance there that is permissible, but they are quite free of the defects.

Q. And is there a difference in the selling price between the fancy and the standard sauce?

A. Yes.

Q. What is that difference?

A. The difference—

Mr. Karasick: Not what is the difference again, Mr. Examiner—I am sorry to interrupt, but it is what was the difference at the point of time that this is alleged to have occurred.

Q. (By Mr. Berke): Well, what was the difference?

Mr. Karasick: That is the only relevant inquiry here.

Q. (By Mr. Berke): What was the difference in 1954?

(Testimony of Elmo Martini.)

A. The difference in 1954 was approximately 20 cents per case, or I should say 20 cents per dozen. That's 40 cents per case.

Q. Now, if a defect beyond the tolerance that you have [269] mentioned here a moment ago is found in a can, what happens then?

A. That lot carrying that code mark will be downgraded to a standard or a substandard sauce, or slices. We have tried various ways of watching that, as soon as—

Q. How do you watch that?

A. Last year we got a series of colored cans and as soon as the grade dropped on us, we'll assume that I was making a fancy, a top fancy applesauce, we would run into a bad lot of apples that we found or we saw at the finish point could not be humanly cleaned up to make that particular grade, we would insert, let's say, a blue can into the line, and when the blue can came to the labeling line all of the stuff—or the applesauce or slices, whichever they were, that came from that point on until a yellow can, let us say, was coming through, which could have been an hour or two, or it could have been the rest of the day—came through, that particular product that came through in that time would be downgraded to a secondary grade. Now, may I explain a little bit further?

Q. Go ahead.

A. There are other methods of doing it. One of my competitors in Sebastopol says that it is impossible to make a standard or a fancy sauce, that you

(Testimony of Elmo Martini.)

either can make one or the other in a complete day.

Mr. Karasick: Just a moment. What this witness' hearsay [270] testimony is about some competitor and his opinion should be stricken.

Mr. Berke: I will agree that part go out.

Trial Examiner: Strike it.

* * * * *

Q. (By Mr. Berke): Assuming that you were processing sauce, and apples in that condition came through, will you tell us what would happen, as you described what would happen when you were [271] slicing apples?

Trial Examiner: You mean physically?

Mr. Berke: Yes. [272]

* * * * *

The Witness: The apple possibly could get by the final inspection, because it has got its hole, and it will be trimmed, and then it will go through the chopping machine prior to the final inspection belt, that you either have one person, two, or sometimes three, depending on the apples; I assure you that a [273] core in an apple running through that machine will make quite a mess on that table, and if there is any number of cores run through there, full cores, I doubt very much whether the girls that are on that table could ever clean them up. They see them going through, but unfortunately there is no stopping to any of these lines; if we could only stop the flow of applesauce or apples it would be a wonderful thing, but it can't be done. Everything behind that thing is coming along, and if any one

(Testimony of Elmo Martini.)

segment of it stops, you've never seen a mess, Mr. Karasick. You have applesauce and apples all over the place.

Q. (By Mr. Berke): Now, you said if an apple in that condition got through there would be a mess. Now, what do you mean by a mess?

A. The core—actually, these blades in these slicing machines would chop it up, they'd chop it up rather fine. We do that because it is easier to cook, and you'd almost have to be picking up, in a case of a core—you'd have to be picking up almost dust particles. It would grind the core up to almost powder.

Q. Now, tell us whether or not the process that you have described with respect to the cans, the blue label and the yellow label, would be the same if you were processing sauce when that occurred?

A. Yes. [274]

* * * * *

Q. (By Mr. Berke): During the 1954 season, to your knowledge did anyone else plug or decorate an apple in the fashion that you have described here? A. Not to my knowledge.

Q. Now, Mr. Martini, you were also asked by Mr. Karasick about the discharge of Mrs. Storey. Did you at my request check the time record on Mrs. Storey for September the 25th, the day on which she was discharged?

A. Yes, sir. [275]

* * * * *

Q. (By Mr. Berke): Mr. Martini, I show you

(Testimony of Elmo Martini.)

what purports to be a timecard, No. 339, dated September 25th, 1954, name "Storey, Orice," and ask you if you got that card from the company records at my request? A. Yes.

Q. And, having looked at that card, does this refresh your recollection as to the events that led to Mrs. Storey's discharge on September 25th?

A. Yes.

Q. All right, just a minute. Now, do you have a calendar there, Mr.— A. Yes, sir.

Q. —Martini? I am not sure whether the record shows it or not, but there was some hassle here yesterday about September 25th being a Saturday. Does the calendar show that that was a Saturday?

A. It does.

Q. All right. Does the fact it was a Saturday, and having looked at the card at my request, refresh your recollection as to the events that led to her discharge? A. Yes.

Q. All right. Now, will you please state what occurred on the date, at the time of Mrs. Storey's discharge?

A. Well, I was on the balcony again over the— just outside of the lab and superintendent's office, inside the cannery [276] proper, and saw Mrs. Storey down below with a group of people.

Q. Now, let me ask you, how high above the place where you saw Mrs. Storey and the group of people is this balcony?

A. I would judge that to be about nine feet.

Q. And what does that balcony lead into?

(Testimony of Elmo Martini.)

A. Leads into the superintendent's office and into the—

Q. How do you get up to that balcony?

A. By a stairway.

Q. And where do the stairs lead from the balcony? A. Where do they—

Q. Where do they go to, yes?

A. They go right to the cannery floor.

Q. All right. Now go ahead.

A. So I had been in there talking to Mr. Duckworth and asking him what Mrs. Storey was doing down below me there; and he asked Mrs. Hardin, and Mrs. Hardin said—

Q. Wait a minute. Who is Mrs. Hardin, first?

A. Mrs. Hardin was the acting floor lady at the time.

Q. And tell us whether or not she was Mrs. Storey's supervisor that day? A. Yes, she was.

Q. All right, go ahead.

A. And Mrs. Hardin stated to Mr. Duckworth that she was ill. Mr. Duckworth reported back to me and stated that Mrs. Storey had clocked out ill, so at that point I sent Mr. Duckworth down [277] to see if she had clocked out, and he returned and said that she had, and I said—and I told him, well, if she's clocked out, why doesn't she leave the building and go home, if she's sick. So—

Q. Go ahead, what happened then?

A. So he went downstairs and talked to her and came back and told me that she wouldn't leave. So

(Testimony of Elmo Martini.)

I told him at that time to go down and see that she left and never came back.

Q. Now, do you recall whether Mrs. Storey and these women were standing — whether they were standing near any machinery down in the cannery?

A. Yes. There is always machinery.

Q. Now, what sort of machines were they near?

A. They were near the—they were near tanks, and there were some tanks stored there, and, as I recall, there was a fork-lift backing in and out of the cannery proper.

Q. Any other machinery?

A. What's that?

Q. Was there any other machinery nearby?

A. No, just the—the sliced apple tanks and the fork-lift that was doing something in there.

Q. And about how many women did you say were with her?

A. Oh, I would say ten, fifteen.

Q. And after Mr. Duckworth went down a second time, pursuant to your instructions, did you see him talking with her, that [278] is, did you continue watching and did you see him talking to her?

A. No.

Q. Do you know whether she left after he went down a second time?

A. He informed me that she had.

Q. Now, was there an incident involving Mrs. Storey preceding that day? A. Yes.

Q. When did this incident occur, approximately?

(Testimony of Elmo Martini.)

A. I would say that it would be approximately—this was the 25th, I'd say that it was the 22nd or the 23rd of September. A couple of days before that Saturday.

Q. And where did this incident take place?

A. In approximately the same place there, possibly to the right, looking at the diagram, possibly to the right a little bit further.

Q. Now, was this during working hours?

A. The incident?

Q. Yes. A. Yes.

Q. Incidentally, was the occasion which you related on the day of discharge, when you saw Mrs. Storey and the women down there, was that during the working time? A. Yes. [279]

Q. Do you recall independently what time Mrs. Storey clocked out or checked out on September 25th, the day of her discharge?

A. Yes, only by having seen that card, it was at 11:24.

Q. 11:24? A. Yes.

Q. A.m. or p.m.? A. A.m.

Q. All right. Now, going back to the incident that occurred two or three days previously, which you say took place at about the same point, what time of the day or what part of the day do you recall that that happened?

A. That was just at the beginning of the lunch break, the beginning of the shift after lunch hour, let's say, or after the lunch half hour.

(Testimony of Elmo Martini.)

Q. You mean when they were supposed to go back to work after the lunch hour?

A. Yes, right at that time. [280]

* * * * *

Q. (By Mr. Berke): Will you tell us what took place then, and if there was any conversation will you identify who spoke? A. What was that?

Q. Tell us what occurred on that occasion, if there was any conversation involved will you identify the persons speaking?

A. Yes. Well, I was having a meeting with Leonard Duckworth at the time, and Mrs. Storey sent for me, sent up for me through Edna Hardin and wanted to talk to me. So I went downstairs and talked to her and the group of about 20 to 25 women around her.

Q. And where was that group standing?

A. They were directly underneath the cradle that holds the vacuum—the stainless steel tanks at the blancher dump.

Q. Now, if those women hadn't been standing there, what should they have been doing at that time?

A. At that time about 50 or 60 percent of the women were already at their posts, waiting for the machinery to start.

Q. Maybe you didn't understand the question. What about these particular women?

A. They were to be at their posts.

Q. That is, they were to be working, were they?

A. They would have been started to work, yes.

(Testimony of Elmo Martini.)

Q. All right. Go ahead and tell us what occurred when you got down there.

A. At that time Mrs. Storey asked me—she wanted me to meet [281] with the Union officials, and I told her that I definitely would not.

Q. Well, did she use any names, if you recall, give us as near as you can recall.

A. Yes, she used Mr. Rhodes' name, and I told her that since the matter was in the hands of the National Labor Relations Board I had nothing to talk to him about and that the Board would render their decision shortly, so be patient with them.

Q. Was anything else said by you or Mrs. Storey or anybody else that was present?

A. No. She told me at that time that if I didn't meet with them that they would walk out, and to that I said that I would advise them to go to work and forget the issue.

Q. Did they go back to work? A. Yes.

Q. Now, you told them, as I understand it, that that was a matter pending before the National Labor Relations Board, is that correct?

A. Yes.

Q. What matter was, if you recall, pending at that time?

A. As I recall, at that time we were awaiting to see—well, there have been so many times, I don't know whether we were waiting to hear of the date of the election or whether we were waiting to find out whether or not an election would be called.

Q. I see. [282] A. I'm not certain.

(Testimony of Elmo Martini.)

Q. In other words, there was a representation matter pending before the Board?

A. That's correct.

Q. Involving your employees at the time?

A. Yes.

Q. And that is what you had reference to?

A. That's correct.

Q. When you mentioned the matter before the National Labor Relations Board? A. Yes.

Q. Now, was there another incident involving Mrs. Storey and yourself? A. Yes.

Q. When did that occur?

A. That occurred that same day.

Q. What part of the day, do you recall?

Trial Examiner: When you say "that same day," you mean on—

The Witness: On the 22nd or 23rd. Yes, I had Mr. Duckworth call her into my office.

Q. (By Mr. Berke): Well, can you tell us about what part of the day it was?

A. Oh, I would say that it was possibly around two o'clock.

Trial Examiner: P.m.? [283]

The Witness: P.m.

Q. (By Mr. Berke): All right.

A. So I had Mr. Duckworth—

Q. Mister?

A. Mister, yes, go get Mrs. Storey for me and told him to be sure that she took someone else off the line to accompany her and to meet me in his office with him present.

Q. Now, where was his office?

(Testimony of Elmo Martini.)

A. His office is just inside the—is an office off of the little balcony, inside the cannery proper.

Q. Off the balcony you referred to previously?

A. Yes, upstairs.

Q. All right. Now, did he go and get Mrs. Storey? A. Yes, he did.

Q. And did somebody else accompany her?

A. Yes.

Q. Who was it, do you recall?

A. Lila Layman, or Lyman.

Q. Do you know how to spell that last name?

Mr. Magor: L-a-y-m-a-n.

The Witness: M-a-n?

Mr. Berke: Well, I will accept that.

The Witness: Yes.

Q. (By Mr. Berke): Was there anyone else present besides yourself, Mrs. Storey and Mrs. Layman? [284] A. Mr. Duckworth.

Q. The four of you? A. Yes.

Q. And this was in whose office?

A. In Mr. Duckworth's office.

Q. All right. And what took place in there, will you tell us, please?

A. Well, I told Mrs. Storey that inside the plant I did not want another occurrence, such occurrence as had just happened that day a little bit sooner, or a little bit earlier in the day.

Q. And what occurrence were you referring to?

A. I was referring to that group of women she had there, when she called me down and told me they were going to walk out if I didn't meet with the Union officials.

(Testimony of Elmo Martini.)

Q. All right, go ahead.

A. Then I continued, and I told her that actually I admired her fight and also this Lila Layman, I told her the same thing, that I admired the way they looked at things and the way they fought for what they thought was right, but that if they wouldn't do me a favor and cease from having any conversations whatsoever of that type in the building proper where it would disrupt my employees and affect the production of the plant. Then I went on and told her that I would not prohibit her from even using one of our boxes if she wanted to make a speech to [285] the other women there, provided that it was outside the building proper, didn't necessarily have to be off the grounds, but she could do whatever she wanted out there and it was her privilege. I did not ever tell her to stop talking about anything she wanted to.

Q. All right, I just wanted the conversation. Was there anything more to the conversation, did she say anything?

A. Oh, no, I don't recall what the — there was some conversation, I don't recall what it was. I think that they asked me why I didn't go ahead and let them sign up with the Union, and I told them at that, that their opportunity would come and they would decide it themselves.

Q. I didn't understand, you say why you didn't go ahead and sign up with the Union, or why they didn't go?

A. No, why I didn't go and sign up with the Union.

* * * * *

(Testimony of Elmo Martini.)

Q. As I understand it, you then, either that day or the next day, informed Mr. Storey — or, strike that.

Going back now to September the 25th, the day of Mrs. Storey's discharge, is it my understanding that you informed her husband of the discharge?

A. Yes.

Q. Was it the same day or the next day, do you know? A. It was the same day. [286]

Q. About how long after?

A. Oh, twenty minutes, half hour afterwards.

Q. Was there an incident involving Mr. Storey that day? Yes or no?

A. There was an incident involving Mr. Storey, but I don't remember whether it was that day or a day or so previous to that,—

Q. I see. A. ——Mr. Berke.

Q. Where did this incident occur?

A. In Mr. Duckworth's office.

Q. And who was present? A. Mr. Storey.

Q. And who else?

A. Mr. Duckworth was there with him.

Q. And you? A. And me.

Q. Just the three of you? A. Yes.

Q. What took place then? Can you identify who was speaking?

A. I informed Mr. Storey that I had had reports that he was leaving his post and going into other departments during a short breakdown period, short breakdown periods, or possibly at times when there were too many apples having been dumped

(Testimony of Elmo Martini.)

into the flumes, and I told him that I didn't want that ever to [287] happen again, I wanted him to stay at his post and be sure that he stayed there at all times.

Q. Now, you say you told Mr. Storey that you'd been informed about this? A. Yes.

Q. Who had informed you?

A. Mr. Duckworth informed me.

Q. Had you been informed about that just once or more than once?

A. Oh, I had been informed on that a couple—about twice before. [288]

* * * * *

Q. All right. Now, Mr. Martini, in testifying this forenoon about the mechanics of the operation in relation to the [295] freehand chart that is in evidence as General Counsel's 23, among the things I understood you to say was that when you are slicing apples you put them into a tank in which rock salt is added and close the trap door and fill it with water, then the tank is taken out; did I understand that correctly?

A. Yes, the tank is removed from that—from where it was being filled.

Q. All right. Now, how is that tank removed?

A. With a fork-lift truck.

Q. Now, can you describe the work-lift, the type of fork-lift truck that takes that tank out, or did last year?

A. We—I think the best way to explain it, we use all Clark, they are Clark 5,000 pound trucks.

(Testimony of Elmo Martini.)

Q. Are these operated by a motor?

A. By a gasoline motor, yes.

Q. Gasoline motor. And do you have a man that actually sits on it and operates it? A. Yes, sir.

Q. And how does the fork-lift operate when it takes these tanks out, just tell us where it comes into and what it does.

A. Actually, the fork-lift stays inside the plant there most of the time, other than times when he has to grease it and gas it and so forth. It will go over where the tanks are being filled. We all know what a fork-lift is. That is two forks, they will fit directly underneath the tank filled with apples [296] and water, and he will move that to another position, and immediately put an empty tank there, because the hopper doesn't hold very many apples, and it will soon run over if you don't add an empty tank to it. That is his first step. That takes quite a little bit of maneuvering to have gotten that tank out of there, set it down, pick up an empty tank and put it back under in the hopper. Then from that—

Mr. Karasick: Just a moment, Mr. Martini. I move at this time to strike the witness' characterization and conclusion that that takes quite a bit of maneuvering. I think he is entitled to testify as to the operation. He is not entitled to insert his interpretations of these operations.

Mr. Berke: Certainly he is competent to tell—

Trial Examiner: I know, I will say though that as far as I am concerned "quite a bit of maneuver-

(Testimony of Elmo Martini.)

ing" doesn't give me any description at all. It means nothing.

Mr. Berke: All right.

Q. (By Mr. Berke): Will you tell the Trial Examiner what you mean by maneuvering in the operations?

A. Well, he has to—the fork-lift picks up the tank. He has to back away from that point and usually drives straight ahead to another point in the plant. Then he goes to pick—then he backs out of there or goes forward, depending upon where the empty one is, and picks up an empty one immediately and puts it back where he took the full one out. Then he puts [297] —after he has left the empty one, his next move is possibly to take an empty one off of the top of the blanching—off of the top of the blanching.

Q. What does he have to do to that?

A. Well, all depends on just what position he is in. He usually has to—the blanching tank is, we'll say, sitting in this direction, or let's say that it is sitting this way and—

Q. Now, wait a minute. Slow up a bit.

A. Let's say—

Q. Just a moment. Slow up a bit. You indicate with your hands that the tank might be sitting straight forward in front of the fork-lift, is that what you mean by putting your hand out the way you did, or at an angle?

A. No, I was referring to—I was referring to the

(Testimony of Elmo Martini.)

fork-lift having to pick the tank off the top of the blanching.

Q. All right.

A. Tank, which is up there about, oh, six, eight, maybe nine feet. I don't know the exact height of it. Now, if he is—if he has just set an empty tank under the hopper where the slices feed into it—he must then back out and drive to the right, back again, and get himself directly straight into that thing, where he will have to back two or three times before he can pick up the tank off of the top.

Q. In other words, he has got to be directly under it, is that what you are saying? [298]

A. He has to be directly straight into it so his forks will fit under it, you see.

Q. All right.

A. You can't pick it up from all directions. Then, after he does that, he lets the empty tank down and must find a place for the empty tank, wherever that one is—it is hard to tell, it could be on either one side of the doorway or the other, and he goes and picks up a tank that is draining water out—will drain the water, the salt, right out of these tanks, so he picks that one up and puts it up on top of the blanching tank; again he has to back in and out of the place and get the tank up on top of the blanching, the blancher tank.

Q. Now, where do all these motions and maneuvers take place? A. They take place—

Mr. Karasick: Just a moment. I object to the

(Testimony of Elmo Martini.)

characterization in the question that the motions are maneuvers. It's a fork-life operation; where does it occur is one thing, but to characterize it in a question is another.

Q. (By Mr. Berke): Well, what would you call a thing that is going back and forth and back and forth, standing still,—

Mr. Karasick: I object to the question.

Trial Examiner: Go ahead.

The Witness: It's taking place in an area which I would guess is 12 by—not over 12 by 15 or 18 feet total. Now, there are some— [299]

Q. (By Mr. Berke): And what is this area you are talking about?

A. It's between the blanching tank and filling—I will have to get the map for you again—and the hopper where the sliced apples are put into the tanks, where they are being filled.

Q. Now, is that inside or outside the cannery?

A. That is inside.

Q. Now, will you tell us, Mr. Martini, whether such movement took place last year in the area where Mrs. Storey and this group of women were?

A. Yes, it was at all times, they'd be—the fork-lifts and tanks were there all the time. [300]

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Redirect Examination * * * * *

Q. (By Mr. Karasick): Did I understand your testimony to be that employees who worked for the company in prior years and had not made any formal application for the succeeding season were not

(Testimony of Elmo Martini.)

notified by postcard if they wanted to return to work at the new season?

A. We only notify those that have a signed employment application.

Trial Examiner: For the current year?

The Witness: Yes. [308]

* * * * *

Trial Examiner: Did you know before Mrs. Dickerson was discharged that she was going to be discharged?

The Witness: No. [328]

Trial Examiner: When did you first learn about her discharge?

The Witness: Well, I wouldn't know that. It was within—could have been that day, and it might have been the day after or a couple of days after that, all depending where I—I could have been out of town.

Trial Examiner: When were you told about the plugged apples, before or after you were notified of Mrs. Dickerson's discharge?

The Witness: No, I was told about the plugged apples after, I was told at the same time but it was—

Mr. Karasick: I'm sorry, I don't hear.

Trial Examiner: Read the answer. Let him hear the answer.

Mr. Karasick: May I have the question, too? I didn't get any of it.

Trial Examiner: Read the question.

(Question and answer read.)

(Testimony of Elmo Martini.)

Trial Examiner: Did you want to finish it?

The Witness: Yes, let me see. My trend of thought was—I was made curious at the time, and that's when I saw the plugged apple, because I had somebody show me an apple there that was found.

Trial Examiner: Have you any recollection now, knowing the date of Mrs. Dickerson's discharge, as to how long after [329] that discharge you were first told about it and the plugged apple?

The Witness: I would say that it was the next day. [330]

* * * * *

Recross Examination

Q. (By Mr. Berke): Was 1954 your first year as manager of that cannery? A. Yes, sir.

Q. When you took over as manager, did you make some changes in policy and procedure in the cannery as contrasted with the way it was handled in the preceding years?

A. That's right, I tried to, yes.

Q. Now, was the incident in which you asked Mrs. Storey and [344] Mrs. Layman, I believe you said, to come in—as I understand, it was the first time that you had had at that cannery, under your management, an occasion to call anybody in where you asked them to be accompanied by someone else, is that right? A. Yes.

Q. You did start to say, and you were cut off by Mr. Karasick on that, that you had had similar occasions, in other canneries that you have operated, to do the same thing, is that right?

(Testimony of Elmo Martini.)

A. I didn't operate canneries. They were wine-ries that I had, Mr. Berke.

Q. All right, and—— A. Yes.

Q. And when you had been operating those wine-ries, did you have occasion to follow the same prac-tice that you did last year with Mrs. Storey?

A. Yes. [345]

* * * * *

ORICE STOREY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [362]

A. Yes. [345] * * * * *

Direct Examination

Q. (By Mr. Magor): Mrs. Storey, will you now talk so this woman in the back of the audience can hear you, so we can all hear what you say. Will you do that, please? A. Yes.

Q. Are you presently employed, Mrs. Storey?

A. Yes.

Q. By whom are you employed?

A. Teamsters Local 980.

Q. Is that the Charging Party in this matter?

A. Yes.

Q. How long have you been employed by the Teamsters? A. Since about October 1st.

Q. Of what year? A. 1954.

Q. Were you ever employed by the Sebastopol Apple Growers Union? A. Yes.

Q. When were you first employed by that com-pany? [363] A. September, 1953. [364]

* * * * *

(Testimony of Orice Storey.)

Q. Now, at the time you started working for the company in 1954, Mrs. Storey, were you a member of any labor organization? A. No.

Q. Did you sign a pledge card in any labor organization after you started working for the company, in 1954? A. Yes.

Q. Do you recall what day it was?

A. August 4th.

Q. Nineteen fifty— A. 1954.

Q. Will you tell us what labor organization it was? A. The Teamsters, Local 980.

Q. That is the Charging Party in this matter?

A. Yes.

Q. Will you tell us from whom you obtained the pledge card? A. Mr. Duckworth. [373]

Q. And Mr. Duckworth was—had what position with the company? A. Plant Superintendent.

Q. Will you tell us the circumstances under which you obtained a pledge card from Mr. Duckworth?

A. Well, as I left the plant at the end of the shift on that day—

Q. What time would that have been, Mrs. Storey? A. Four o'clock.

Q. Was anybody with you at the time?

A. My husband.

Q. Anybody else? A. Marjorie Byrd.

Q. What did you do?

A. Well, when I left the plant, I saw Mr. Duckworth and Charlie Williams walking behind two men, going toward the highway.

(Testimony of Orice Storey.)

Mr. Berke: Could you keep your voice up, please.

Q. (By Mr. Magor): Did you know the two men at that time? A. No, I did not.

Q. Have you subsequently learned their names?

A. One of them.

Q. Will you tell us what that one person's name is?

A. Angelo Bertolucci, President of Local 980.

Q. Did you observe Angelo Bertolucci and the other man doing [374] anything at that time?

A. They were handing out cards and literature to the employees.

Q. You say Charlie Williams was with Mr. Duckworth? A. Yes.

Q. Who is Charlie Williams, if you know?

A. Night Foreman.

Q. Did you observe Duckworth and Charlie Williams doing anything?

A. Well, when the men reached the highway, Mr. Duckworth and Mr. Williams came back and stopped by our car.

Q. Where was your car at the time?

A. In the parking lot.

Q. Who was driving? A. My husband.

Q. You say yourself and your husband and Margie Byrd were in the car? A. Yes.

Q. Was anybody with Mr. Duckworth and Mr. Williams? A. No.

Q. Now, will you relate to the Trial Examiner

(Testimony of Orice Storey.)

the conversation that occurred at that time, and tell us what was said?

A. Mr. Duckworth handed me two cards and said, "As you leave, hit that man with these."

Mr. Berke: As you leave what?

Mr. Magor: "hit that man with these." [375]

The Witness: Then Charlie Williams said to my husband, said, "As you leave, do us a good turn and run over that man."

Q. (By Mr. Magor): Was anything else said?

A. No.

Mr. Magor: I'd like to have this document marked for identification purposes as General Counsel's Exhibit next in order.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 28 for identification.)

Q. (By Mr. Magor): I show you, Mrs. Storey, a document marked for identification purposes as General Counsel's Exhibit 28, entitled, "Authorization for Representation under the National Labor Relations Act," and I ask you if you can identify that? A. Yes.

Q. I notice a signature thereon. Can you identify that as your signature? A. It is.

Q. I notice the date thereon is August 4, 1954?

A. Yes.

Q. Did you put that date in there yourself?

A. Yes.

(Testimony of Orice Storey.)

Mr. Magor: I formally offer into evidence General Counsel's Exhibit 28. [376]

Trial Examiner: Any objection?

Mr. Berke: No.

Trial Examiner: Do you have a copy of that, too?

Mr. Magor: I beg your indulgence again, Mr. Trial Examiner. I will ask leave to withdraw and make a copy.

Trial Examiner: It will be received, subject to the production of the duplicate.

(The document heretofore marked General Counsel's Exhibit No. 28 for identification was received in evidence.)

Mr. Magor: Thank you, sir.

Q. (By Mr. Magor): Now, Mrs. Storey, showing you again General Counsel's Exhibit 28, is that the card you obtained from Mr. Duckworth?

A. Yes, it is.

Q. Is the date that you signed it the date it shows? A. Yes.

Q. After August 4th, 1954, Mrs. Storey, will you tell us what Union activities, if any, you engaged in?

A. I passed out pledge cards and Union literature.

Q. And where were you, or where did you pass out pledge cards and Union literature?

A. In and about the cannery.

Mr. Berke: Could we, Mr. Trial Examiner,—Would you ask the witness to please try her best to keep her voice up? It [377] just doesn't carry.

(Testimony of Orice Storey.)

Mr. Magor: Will you please speak up a little louder, Mrs. Storey.

Trial Examiner: Speak louder than you normally would.

Mr. Magor: It is difficult to hear you.

(Answer read.)

Q. (By Mr. Magor): To whom did you pass out pledge cards and Union literature?

A. The other employees.

Q. Was this during working hours? A. No.

Q. Will you tell us when it was that you did this?

A. Before and after work, and on my lunch hour.

Q. Can you tell us to—

Mr. Berke: Just a moment. I didn't get it, before and after what?

Mr. Magor: Lunch, and on her—

Trial Examiner: Before and after work, and on her lunch hour.

Mr. Berke: Before and after working hours, and lunch hour?

Trial Examiner: Before and after work.

Mr. Berke: Oh.

Q. (By Mr. Magor): Did you have any breaks during the day? A. Yes.

Q. Will you tell us when you had breaks, to the best of your [378] recollection?

A. During the morning and afternoon.

Q. How long was the break?

A. Ten minutes.

(Testimony of Orice Storey.)

Q. Tell us to the best of your recollection how long your lunch hour was during the 1954 season, while you were employed there? A. One hour.

Q. Can you tell us to the best of your recollection today when that one hour was?

A. Eleven to twelve.

Q. Were you a member of any Union committees, Mrs. Storey? A. Yes.

Q. And what Union committee were you a member of?

A. The day shift, I was on the committee from the day shift at Sagu.

Q. At Sagu? A. That's right.

Q. Were you appointed or elected to that position? A. Yes.

Mr. Berke: Yes what?

Trial Examiner: Appointed or elected, which?

The Witness: Appointed.

Q. (By Mr. Magor): You were appointed; who appointed you? A. Roy Rhodes. [379]

Q. Is Roy Rhodes the same individual who has testified in here previously? A. That's right.

Q. Where were you at the time that he appointed you to the Union committee? A. In my home.

Q. Was anybody else present at the time?

A. No.

Q. Did you attend any Union committee meetings? A. Yes.

Q. And where did you attend those meetings?

A. The Santa Rosa Labor Temple.

Q. Do you recall, to the best of your recollec-

(Testimony of Orice Storey.)

tion, the day when it was that you first attended a Union committee meeting?

A. About the second week in September.

Q. Can you tell us, to the best of your recollection today, the names of any other Union committee members?

A. The original committee was my husband and I, Eva and Leonard Lee, Lena Ameral—

Mr. Berke: Wait a minute.

Trial Examiner: Eva who?

The Witness: Eva and Leonard Lee, Lena Ameral, Leanor Johnson, Mary Russell.

Q. (By Mr. Magor): You say that was the original Union committee, is that correct? [380]

A. Yes.

Q. Was there more than one committee?

A. Yes, yes.

Q. There were others appointed after that?

A. Yes.

Trial Examiner: Excuse me, I'd like to hear the name after Leanor.

Mr. Berke: Johnson, I believe she said.

Trial Examiner: What?

Mr. Berke: Johnson.

Trial Examiner: Johnson? All right.

Q. (By Mr. Magor): What was the last day on which you worked for the Company?

A. September 25th, 1954.

Q. From the time that you first attended Union meetings, until the last day that you worked for the Company, were you on the Union committee?

(Testimony of Orice Storey.)

A. Yes.

Q. Would you tell us to the best of your recollection how many Union committee meetings you attended? A. Approximately one a week.

Q. Will you tell us where these Union committee meetings were held?

A. Santa Rosa Labor Temple.

Q. What was the purpose of the Union committee, Mrs. Storey? [381]

Mr. Berke: I object to that as irrelevant and immaterial.

The Witness: Could I have that again, please?

Mr. Berke: No bearing on the issues here.

Trial Examiner: The purpose of the committee, you say? I will grant that. I will permit that. You mean what were their functions?

Mr. Magor: That's right.

Q. (By Mr. Magor): Do you understand the question? A. I'm sorry, I don't.

Q. All right. What was the purpose of this Union committee, or the functions of that committee, that you were a member of?

A. Well, we made reports, how we were progressing, how many cards we passed out, and received new literature.

Mr. Berke: I am sorry, I just cannot hear her.

Trial Examiner: Can you speak louder, please.

The Witness: I will try. I'm sorry.

Trial Examiner: Will you read what—

Mr. Magor: Will you read it back now so the witness can get her train of thought.

(Testimony of Orice Storey.)

(Answer read.)

Q. (By Mr. Magor): Do you want to continue your answer, Mrs. Storey? A. That's it.

Q. And to whom were these reports made?

A. To the Union representatives. [382]

Q. Now, after you first saw Mr. Bertolucci and the other individual whose name you do not know on the highway at the cannery on August the 4th, 1954, after that did you see any Union representatives out on that highway near the Molino plant?

A. Yes.

Q. Will you tell us when it was after that you first observed them? A. Almost daily.

Q. And what did they do while they were there, to your observation?

A. Well, they used the loudspeaker, told us of the meetings, and sometimes answered our questions that we had asked them.

Q. Did you ever talk to Edna Hardin about the Union? A. Yes.

Q. Will you tell us when, to the best of your recollection, you talked to Edna Hardin?

A. After I became a committee member, I asked her to attend a Union meeting with me.

Q. You say—

Mr. Berke: May we have when?

Mr. Magor: I will lay the foundation, Counsel.

Q. (By Mr. Magor): You say it was after you attended a Union—became a Union committee member? A. Yes. [383]

Q. Will you tell us how long after that it was?

(Testimony of Orice Storey.)

A. About two weeks.

Q. About two weeks. Where were you talking to Edna Hardin?

A. At my place of work, on my ten minute break.

Q. Was anybody else present at the time?

A. My husband was quite near.

Q. Did he engage in the conversation while you were talking to Edna Hardin?

A. Not while I was talking to her.

Q. How far away from you was your husband?

A. About eight feet.

Q. Was anybody else present at the time?

A. No.

Q. What time of day was it, to the best of your recollection today? A. In the morning.

Q. Now, will you tell us, Mrs. Storey, at that time what was said and who said it?

A. I asked her if she'd like to attend a Union meeting with me that night. She said she'd like to but she couldn't.

Q. What occurred thereafter?

A. Then she walked over to my husband and I heard him ask her to attend the meeting that night, and she said she'd like to, but if she did there'd be too much "yak-yak."

Q. Was that all of the conversation? [384]

A. Yes.

Q. You say the last day you worked for the Company—and correct me if I am wrong—was September 25th, 1954? A. Yes.

(Testimony of Orice Storey.)

Q. Before that date, was there any incident with a group of women and Mr. Martini?

A. Yes.

Q. Do you recall when that was; using September 25th, 1954, as a date to use as a basis, how long before that was it? A. About four days.

Q. Will you tell us—Did you have lunch at that time on that day? A. Yes.

Q. Will you tell us what occurred during your lunch hour?

A. The Union representatives were parked on the side of the highway.

Q. Do you recall who they were?

A. Mr. Grami was one.

Q. Where were you at the time?

A. In the car, in the parking lot.

Q. And you say "the car"; whose car were you in? A. My husband's.

Q. Was your husband present? A. Yes.

Q. Was anybody else present with you in the car? [385] A. No.

Q. Were you having lunch at the time?

A. Yes.

Q. Will you tell us about what time this was?

A. Between eleven and twelve.

Q. Will you tell us what occurred at that time?

A. Well, the men on the loudspeaker suggested that we get a committee of six or seven and approach Mr. Martini and ask him if he would consider meeting with the Union representatives in regard to an immediate election.

(Testimony of Orice Storey.)

Q. What did you do then?

A. When I had finished lunch, I walked over to a car parked near and asked the women if they would go with me.

Q. Will you tell us who was in that car, to the best of your recollection today?

A. Elsie Dickerson, Valerie Cuttress and Gertrude Reece.

Q. What did you do then?

A. Well, we started toward the plant and called several other women, and then everybody came.

Q. When you say "everybody," who do you include? A. Most of the women employees.

Q. Where did you go?

A. We went inside the cannery, and was told that Mr. Martini was up in the office.

Q. Who told you that? [386]

A. I'm sorry, I don't know.

Q. What happened then?

A. Well, Leanor Johnson went up the stairs and knocked on the door, came back and told us that Mr. Duckworth said that Mr. Martini was busy and couldn't see us. Then we just stood and waited and Steve Struempf came by and I asked him if he thought it was a good idea for us to speak to Mr. Martini about it. He refused to answer. Then Lila Layman went back and knocked on the door and was told that Mr. Martini was still busy and couldn't see us.

Q. Now, you say Lila Layman went back and

(Testimony of Orice Storey.)

knocked on the door; what door was she knocking on?

A. She went up the stairs and knocked on the office door.

Q. All right. You say everybody was there. Could you tell us approximately how many people were there? A. More than seventy.

Q. And were these women, men, or both women and men? A. Mostly women.

Q. What shift was this? A. The day shift.

Q. Now, after Lila Layman came back and said Martini was busy, what happened then?

A. The whistle blew, then everybody rushed over and checked their cards and started back to work.

Q. When you say checked their cards, would you tell us what [387] physically they did?

A. The timecards, the time clock, we punched in on the time clock.

Q. What occurred then?

A. We started back to work, and some of them had arrived at their place of work, and then I saw Mr. Martini coming down the stairs with my husband.

Q. And what is your husband's name?

A. C. E. Storey.

Q. What does the "C" stand for?

A. Clarence Edward Storey.

Q. You saw your husband and Mr. Martini coming down the stairs, is that correct? A. Yes.

Q. What did you do then?

(Testimony of Orice Storey.)

A. Martini called out and asked what was wrong, he asked what was wrong.

Q. Did anybody answer?

A. No one answered him, so I turned and went back and asked him if he would consider meeting with the Union representatives.

Q. You say you turned and went back; where did you go back to?

A. I went back about half way across the cannery.

Q. Was anybody with you when you asked him this?

A. Most of the women were standing around.

Q. What did he say when you asked him this question?

A. He said, "No, Ma'am, I am not," that he was willing to have an election but he couldn't until the Board decided.

Q. What was said then, if anything?

A. Lila Layman says, "Oh, that same old stall," and then I turned my back and told the women to go back to work.

Q. What did the women do?

A. Everybody went back to work.

Q. Do you recall, to the best of your recollection, what time it was that you went back to work on that day?

A. About two or three minutes after twelve.

* * * * * [389]

Q. (By Mr. Magor): Now, after talking to

(Testimony of Orice Storey.)

Mr. Martini on the date that you have referred to, what did you do then?

A. We went to work.

Q. Anything occur that afternoon at all?

A. Yes, about 3:30, Mr. Duckworth came to me and said Mr. Martini wanted to see me in the office.

Q. Where were you at the time Mr. Duckworth came to you? A. I was working.

Q. Was anybody else present at the time?

A. The other workers were working.

Q. What did you say to Mr. Duckworth, if anything? A. Nothing.

Q. What did you do then?

A. I started to go up to Mr. Martini, up to the cannery office, and I saw Lila Layman at the head of the stairs, going up too. I went in the office, and Mr. Duckworth followed me in.

Q. And what office did you go into?

A. The cannery, the office that is in the cannery.

* * * * * [398]

Q. (By Mr. Magor): Now, who else was present in the office at that time?

A. Mr. Martini, Lila Layman, Mr. Duckworth and I.

Q. Will you tell us now, Mrs. Storey, to the best of your recollection today, what was said and who said it?

A. Mr. Martini did the talking mostly. He started out by saying he was very disappointed in me, that he knew me, he didn't know the other women that worked there, but he did know me and

(Testimony of Orice Storey.)

watched me and knew I was a good worker, and he didn't think I'd be taken in by those Union guys. He asked me why I was doing it, and I told him money, and did he think 95 cents was adequate pay for what we were doing. He said he didn't know, but I'd have to remember that he always took care of us and we had our jobs back each year, and anyway the Union just—the men just wanted our initiations and dues, and that once we were in the Union we'd be assessed from five to twenty-five dollars and be worse off than we were then. Then he told me he'd done everything he could, he'd been to a hearing, but he couldn't have an election until the Board decided. Then he asked me if I knew who the NLRB always favored. I said I thought they were fair and impartial and he said no, they always favored unions. Then he told me that the Union wasn't interested in me as a person or in my community, to think it over good, and not get involved in anything that wouldn't do me [399] or anyone else any good. Then he told me that he had been talking to my husband that day, and he said, I told him and now I am telling you that I will not have you talking up this union thing on cannery property; and he said, I know what you are doing, Mrs. Storey, and I said, but not on your time, Mr. Martini. He said, well, I have told your husband, now I am telling you, I will not have it. Then he told me that he didn't think the people wanted an election and if we had one he thought we couldn't win. I told him if he felt that way

(Testimony of Orice Storey.)

why not consent to an immediate election. He said it was too much trouble, for me to think it over good and not make any mistakes. Then he told me that if we did win an election we'd be worse off because they'd just signed a contract at Watsonville for 90 cents an hour. I asked him if that was Teamsters, and he said yes. I asked for the name of the cannery and he told me he thought that it was Mann's Cannery. I told him I'd check it, and he said, well, he wasn't sure, he thought that was the name. Then he cautioned me again to think it over good and not make any mistakes, and not get involved in anything that wouldn't do me or anybody else any good.

Q. Recall anything else of the conversation?

A. No.

Q. How long were you in there, Mrs. Storey, in the office at that time?

A. From 3:30 to 4:20. [400]

Q. What time do you normally go home?

A. Four o'clock.

Q. Does the whistle blow at all?

A. At four.

Q. Did you hear the whistle while you were in the office? A. Yes. [401]

* * * * *

Q. And on this date in question, what time did you go home on that day? A. Four o'clock.

* * * * * [402]

Q. (By Mr. Magor): You say September 25th was the last day that you worked? A. Yes.

(Testimony of Orice Storey.)

Q. Did you work the day before that?

A. Yes.

Q. Will you describe your physical condition at that time?

A. I had an awful cold, asked Edna Hardin several times for aspirins.

Q. And what did she do, if anything?

A. She always brought them to me.

Q. Did you have any conversation with Edna Hardin about your physical condition on that day?

A. Yes.

Q. Will you tell us?

A. In the afternoon I asked—she suggested that I go in the lounge room and lay down.

Q. Do you recall what time it was, what time of day it was, to the best of your recollection?

A. About three.

Q. Was anybody else present at the time?

A. No. [408]

Q. What did you do then?

A. I was there when the work stopped for that afternoon.

Q. And why did the work stop, if you know?

A. There was a breakdown, I think.

Q. Now, on September 25th, was that a Saturday? A. Yes.

Q. Was that the last day you worked for the Company? A. Yes.

Q. Would you describe your physical condition on that day?

(Testimony of Orice Storey.)

A. I still had a cold and was still—asking Edna Hardin for aspirins.

Q. And did you work—Strike that.

I believe the Trial Examiner asked you earlier how long you would work on a Saturday. What time did you stop work on Saturday?

A. Till 12 Noon.

Q. Did you work till 12 Noon on this day?

A. No.

Q. What time did you stop working?

A. At 11:24.

Q. And did you punch out at that time?

A. Yes.

Q. Prior to punching out, did you speak to any representative of the Company?

A. I asked Edna Hardin for permission to punch out. [409]

Q. Did you tell her why you wanted to punch out? A. I told her I was sick.

Q. What did Edna Hardin have to say?

A. She gave me permission to go and punch out.

Q. And you did then punch out, is that correct?

A. Yes, I did.

Q. Now, you say you—Strike that.

On this day how did you come to work?

A. With my husband.

Q. And did you walk or did you drive a car or what? A. In the car.

Q. And where was your car at the time?

A. In the parking lot.

Q. Where is the parking lot located?

(Testimony of Orice Storey.)

A. In front of the cannery, a little to the left of the entrance door.

Q. After punching out, will you tell us what you did, Mrs. Storey?

A. I punched out and went to the car. It was hot, and I rolled the glasses down and opened the door and returned to the cannery.

Q. Why did you return to the cannery?

A. To wait until the car cooled.

Q. And where did you return when you went back to the cannery?

A. I came in and stood by the desk where the floor lady kept [410] her applications and gloves and things that she gave out to the people. [411]

* * * * *

Q. What did you do when you got to that application desk, Mrs. Storey, if anything?

A. I stood there, and then three women on one of the benches called me over to talk to me.

Q. Do you recall who those women were?

A. I don't know their names, night shift employees.

Q. And did you talk to them? A. Yes.

Q. How long were you talking to them? [412]

A. A few minutes.

Q. What were you discussing?

A. They wanted to know the name—the place, the location and time of a union meeting that we were going to have the following week. I gave them the time and location and asked them to come. Then they told me they heard one of the women said she

(Testimony of Orice Storey.)

had heard that I was on the committee, and she too would like to be on, and how should she go about it. I told her to call Mr. Angelo Bertolucci, and that his name was in the telephone book. Then she said, Mr. Martini sees me talking to you, and turned her head. Then I walked back and stood by the desk.

Q. And did you see Mr. Martini?

A. No, I didn't see him. [413]

* * * * *

Q. (By Mr. Magor): What occurred then, if anything, Mrs. Storey?

A. I came back and stood by the desk and Virginia Chicano——

Q. Would you spell the name, please?

A. C-h-i-g-a-n-o.

Mr. Karasick: I have also seen it C-h-i-c-a-n-o. Do you know, is it C-h-i-c-a-n-o or g-a-n-o?

The Witness: It has a "g" in it, I'm sure, I'm sure.

Mr. Karasick: It has a "g"?

The Witness: Yes.

Mr. Caldwell: C-h-i-c-a-n-o.

Mr. Magor: So stipulated.

* * * * *

The Witness: She came and sat on the bench next to me [414] where I was standing, and asked me how the Union was doing. I told her fine.

Mr. Berke: Just a moment. I will object to this as not binding on the Respondent, it is irrelevant and immaterial, these conversations between these

(Testimony of Orice Storey.)

individual employees, not shown to have been in the presence of any Company representatives.

Trial Examiner: Excuse me. If there is no showing that this was overheard by a Company representative, I think it can be stipulated——

Mr. Magor: It may go out.

Q. (By Mr. Magor): How long were you talking to Virginia Chicano?

A. Not more than a minute.

Q. What occurred then, if anything?

A. Edna Hardin came and told me that Mr. Duckworth wanted me to wait outside the cannery.

Q. What did you say, if anything?

A. I asked her way. She walked away and didn't answer. [415]

* * * * *

Q. What happened then, if anything?

A. Mr. Duckworth came over and asked me if I would wait outside the cannery. I asked him why, and if I was in the way. He said yes, you are definitely in our way. Then he said, "Would you go outside," and I said, "Well, it's awful hot outside." He said, "I don't care how God-damned hot it is on you. Will you go outside." He pointed toward the front door. I turned and started toward the back and then he said, "Punch out." I said, "I have," and he asked Edna Hardin, said, "Has she punched out?" She said "Yes," and then I went out the back door and into the parking lot.

Q. What did you do then, when you got to the parking lot? A. I waited.

(Testimony of Orice Storey.)

Q. Where did you wait? A. In the car.

Trial Examiner: Excuse me. How long was it after Edna [416] Hardin had left you that Mr. Duckworth came over?

The Witness: Just seconds.

Trial Examiner: Is the back door the one on the east side?

The Witness: This.

Trial Examiner: On the south side?

The Witness: Yes, south.

Q. (By Mr. Magor): Now, before and after shifts, have you ever waited in the location that you have just testified to? A. Yes.

Q. And have you observed other employees waiting there in that same location?

A. They always wait there.

Q. Is that before and after shifts?

A. Yes.

Q. During break periods? A. Yes.

Q. Before this date that you have just testified to, had you or anybody else to your knowledge ever been ordered away from that point? A. No.

Q. Or told not to wait there? A. No.

Q. What time of day was it that you left the cannery property that day, to the best of your recollection today?

A. You mean after Mr. Duckworth spoke to me?

Q. That's right, after you say you went out and waited in the car.

A. About—shortly after 11:30.

Q. Is that the time that—Did your husband

(Testimony of Orice Storey.)

come out then at 11:30? A. No.

Q. What time did he come out?

A. Twelve noon.

Q. And what did you do then, when your husband came out? A. We went home.

Q. Did you talk to any representative of the Company after that, on that same day?

A. After arriving home I called Edna Hardin and asked her if I had been fired. She told me she didn't know, But Mr. Duckworth had taken my card from the rack.

Q. Why did you call Edna Hardin?

A. Because my husband told me that I had been fired.

Q. When did he tell you that?

A. He said that they came out and discussed it with him, and he was sure that I had been fired.

Q. When was it that your husband told you this? A. When he came to the door.

Q. What did you do, if anything, on that same day, after talking to Edna Hardin, or before—after leaving the—

A. I called the doctor and made an appointment with him to see [418] him at one o'clock.

Q. Did you see the doctor on that day?

A. Yes.

Q. Did you get a receipt from the doctor?

A. Yes.

Q. Who is your doctor, Mrs. Storey?

A. Dr. Vieira.

Mr. Magor: I'd like to have this document

(Testimony of Orice Storey.)

marked for identification purposes as General Counsel's Exhibit next in order.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 30 for identification.)

Q. (By Mr. Magor): I show you, Mrs. Storey, what has been marked for identification purposes as General Counsel's Exhibit No. 30, and I ask you if you can identify that.

A. It is a receipt for where I paid for an office call, September—September 25th.

Q. And the date on there is indicated as October— A. I paid it on October 27th.

Q. 1954? A. 1954.

Q. The date indicated on it is September—
A. September 25th.

Q. I mean, the date October 27th, 1954? [419]

A. Oh, yes, that is the date I paid it.

Q. From whom did you receive it?

A. Pardon?

Q. Who did you receive this from?

A. Dr. Vieira's office nurse.

Mr. Magor: I see. I formally offer into evidence General Counsel's Exhibit No. 30 and want the record to note that I have offered that exhibit in duplicate.

Mr. Berke: I object to it on the ground it is irrelevant and immaterial, no proper foundation has been laid for it, it is dated October 27th, it is not by the doctor, it is somebody who is identified as being his nurse. I submit that the proper person

(Testimony of Orice Storey.)

to testify to this would be the doctor, or person who made it. It's irrelevant and immaterial in that respect.

Mr. Magor: I submit it's been properly identified.

Trial Examiner: Pardon me?

Mr. Magor: I submit that it's been properly identified.

Trial Examiner: May I ask if you saw this signed?

The Witness: Yes.

Mr. Berke: There's self-serving statements in there in any respect, I don't have the opportunity to cross examine the doctor or his nurse, or whoever it was that made it.

Trial Examiner: If you don't have an opportunity, Mr. Berke, before the Respondent's case comes on, let me know and I will grant you time. I will receive this in evidence. [420]

(The document heretofore marked General Counsel's Exhibit No. 30 for identification was received in evidence.)

Mr. Berke: You mean I have got to bring him in?

Trial Examiner: If you contest this, yes.

Mr. Berke: I think it is up to them to prove it is properly presented here.

Mr. Magor: I don't think it is necessary at all, Mr. Trial Examiner. This is a receipt she's received from the doctor.

Trial Examiner: I will accept it in evidence.

(Testimony of Orice Storey.)

Q. (By Mr. Magor): After September 25th, 1954, Mrs. Storey, did you go back to the plant at all? A. Yes.

Q. After that day? Do you recall when it was, to the best of your recollection that you next went out there?

A. The following Monday, after having been discharged or ordered to leave the cannery on the 25th.

Q. You say that was on the following Monday?

A. Yes.

Q. What time of day was it that you went out there? A. During the lunch hour.

Q. Did you talk to any representative of the Company at that time? A. Yes.

Q. To whom did you talk? [421]

A. Mr. Martini.

Q. Who was present with you at the time?

A. My husband and Margie Byrd.

Q. Where were you talking to Mr. Martini?

A. Right in front of the cannery entrance.

Q. What time of day was it, to the best of your recollection today?

A. Between 11:30 and 12:00.

Q. Was anybody present with Mr. Martini?

A. One man.

Q. Do you know who he was? A. No.

Q. Do you know him today? A. No.

Q. Will you tell us now, to the best of your recollection, what was said and who said it?

A. We met Mr. Martini and I said, "You are

(Testimony of Orice Storey.)

just the man I wanted to see." He asked me why, and I said, "Have I been fired?" and he said, "Yes, Ma'am, you are fired and that's final." I asked him why, if my work was satisfactory, and he said, "Yes, you were a good worker, but I cannot have you talking up this union thing and agitating among the other girls and forming committees." Then he said, "You are fired and that's final and your husband has your check." I asked him if he knew I was on the committee from the day shift, and he said he didn't give a [422] damn what committee I was on.

Q. Is that all you recall of the conversation?

A. Then he added again, and said, "You are fired and that's final." Then he walked away.

Q. Have you exhausted your recollection?

A. Yes.

Q. Was anything said by him about having girls —that he had girls that had heard you talking about the committee? A. No. [423]

* * * * *

Q. (By Mr. Magor): You have given us the complete [424] conversation to the best of your recollection, have you not, Mrs. Storey?

A. Yes.

Q. Now, I ask you again, did Mr. Martini at that meeting and at that time state to you and Lila Layman that he actually admired your fight and Lila Layman's fight, too? A. No.

Q. Did Mr. Martini at that time, and in that meeting, say, in words and effect, do me a favor and cease from having conversations in the building

(Testimony of Orice Storey.)

proper which would disturb production in the plant?

The Witness: Will you repeat that, please?

Trial Examiner: Read it.

Mr. Magor: Will the Reporter please read it back.

(Question read.)

A. No.

Q. (By Mr. Magor): Did Mr. Martini at that meeting and at that time say in words and effect that you could use one of the boxes and you didn't even have to be off the grounds, and you could do anything that you wanted? A. No. [425]

* * * * *

Q. Now, I ask you, Mrs. Storey, if at any time while you were working for the Company, whether you noticed anything unusual in the belt or in the water or on the belt? A. Yes.

Q. Will you tell us what it was?

A. Rubber balls. [426]

Mr. Berke: Well, may we have a foundation?

Trial Examiner: Yes, be a little more specific.

Q. (By Mr. Magor): Will you tell us when it was? A. During working time.

Q. And what year was it, what season?

A. Both 1953 and 1954.

Q. Let's take the 1953 season first. Can you recall when it was in the 1953 season that you observed anything unusual?

A. During the last, latter part of the season, I remember seeing a mouse in the water.

Q. And where did you see this mouse?

(Testimony of Orice Storey.)

A. I saw Tony Bondi pick the mouse off the belt and put it in a tin can and walk over and put it in the apples. Then he ran inside and said he wanted to see what the girls would do when the mouse got inside the cannery.

Q. And what did the girls do, to your observation?

A. I heard them screaming, and he came back laughing, and also the floor lady was laughing, and said it created quite a disturbance.

Q. Who was the floor lady?

A. Carmelita Montafei.

Q. And where did he put this mouse?

A. In the flume with the apples.

Q. And—you say in the flume with the apples?

A. Yes.

Q. Where do the apples go from the flume?

A. Well, he put it in—outside in the flume and then it would flow inside the cannery.

Q. And when it came inside, where would it go to? A. To where the girls were working.

Q. And what kind of work were the girls doing?

A. Peeling and trimming.

Q. Is that the water in which the apples are that they are peeling and trimming? A. Yes.

Q. And is that what the mouse was in?

A. Yes.

Q. Now, that is in the 1953 season. Can you tell us when it was in the 1954 season that you observed anything unusual?

A. Practically every day.

(Testimony of Orice Storey.)

Q. Is that while you were working there?

A. Yes.

Q. And can you tell us what you observed?

A. Rubber balls, rubber mice, apples with bows of ribbon on them.

Mr. Berke: Apples with what?

The Witness: Bows of ribbon, rubber gloves with cores pushed down in the fingers, and once a live mouse. [428]

* * * * *

Q. (By Mr. Magor): Did you observe who put these articles in that you have just testified to, Mrs. Storey? A. Not all of them.

Q. Will you tell us the ones that you can recall, and name the article?

A. Well, I put the rubber ball in.

Q. Where did you put the rubber ball, Mrs. Storey?

A. It came by in the flume, floated past me and then Oliver Papera brought it back and suggested I put it back in, and I did.

Q. Who is Oliver Papera?

A. One of the workers there. I think he is the oiler. [429]

Q. Was any representative—

Mr. Berke: Think he was what? I'm sorry.

Trial Examiner: Oiler.

Q. (By Mr. Magor): Was any representative of management present at the time? A. No.

Q. And where did you put this rubber ball?

A. In with the peeled fruit.

(Testimony of Orice Storey.)

Q. And where does the peeled fruit go?

A. Into the squirrel cage.

Q. On the belt in front of the trimmers, the water in front of the trimmers?

A. Yes, that's right.

Q. Now, what else did you say you observed during the 1954 season?

A. Rubber mice, rubber gloves with cores in the fingers; looked very much like a hand floating along.

Q. Now, do you recall when it was that you saw the rubber mice?

A. About three weeks before I was discharged.

Q. Do you recall, or do you know who put it in the water? A. No.

Q. Do you recall what happened?

A. The mouse was—well, he was riding along on an apple.

Trial Examiner: That is the rubber one? [430]

The Witness: No, sir this was a live mouse.

Mr. Berke: I thought he was asking about the rubber one.

The Witness: Then the girls started screaming and laughing and Mr. Duckworth ran down behind the trimmers, and then he came back by me and I asked him what happened, and he said, "Oh, it was a bit of a mouse," and measured like that, and he said—and then he laughed and told me one of the girls said it was a rat this long. He said it wasn't. It jumped out and went on the floor.

(Testimony of Orice Storey.)

Trial Examiner: Let the record show that the witness first indicated a measure of about three-quarters of an inch, and finally about six inches.

Mr. Magor: It is agreeable to me.

Mr. Berke: Yes.

Q. (By Mr. Magor): Now, will you tell us, with the rubber mouse, when that was, when was it that you observed the rubber mouse?

A. About the same time.

Q. Do know who put that in the water?

A. Yes.

Q. Who was it? A. Janet Woods.

Q. And what did you observe about that?

A. She brought the mouse to work in the morning and gave it to me to keep, and at noontime she asked for it back, then put it [431] in the water, and he floated all the way through, and he was picked out on the second trim belt.

Q. And where was the second trim belt?

A. It follows the squirrel cage. He left the first trimming, went through the squirrel cage, and then onto the second trim belt.

Q. Do you know who picked it out of the water?

A. No, I do not.

* * * * *

Q. (By Mr. Magor): Was anything said in your presence by management with respect to the rubber mouse? A. No, they laughed about it.

Trial Examiner: Who is "they"? [432]

Q. (By Mr. Magor): Tell us who laughed about it? A. Edna Hardin.

(Testimony of Orice Storey.)

Q. Who? A. Edna Hardin.

Mr. Berke: I move that be stricken as not responsive, was anything said, she said no. Any beyond that I move be stricken.

Trial Examiner: Well, Counsel could ask the question anyway. I will let it stand. However, I would like the time when this occurred, if you will.

Q. (By Mr. Magor): Can you tell us, to the best of your recollection, when this was?

A. About three weeks before I was discharged.

Trial Examiner: Now, may I ask one more question there.

Mr. Magor: Surely.

Trial Examiner: Do you know what came to her attention that she laughed about?

The Witness: She said the mouse looked very much—the rubber mouse looked very much alive.

Q. (By Mr. Magor): Now, you said you saw a rubber glove with a core in the finger?

A. Yes, that's quite common.

Q. And you say it's quite common; have you observed it once or more than once?

A. Yes, more than once. [433]

Q. Is that during the 1954 season?

A. '53 and '54.

Q. Would you describe that so the Trial Examiner will understand what you are talking about?

A. Most of the women there wear rubber gloves to work, so when they—someone pushes the apple,

(Testimony of Orice Storey.)

the cores down in the fingers of the gloves and then puts it in the water.

Q. What would the rubber glove do then, if anything?

A. Float along with the peeled fruit.

Q. Was any representative of management there at the time or times that you observed this?

A. No.

Q. Have you ever seen an apple with a core stuck in it that has been peeled and sliced?

A. Yes.

Q. How often have you observed that?

A. Almost daily.

Q. And would you describe for the Trial Examiner, so he will know what you are talking about, what you have observed?

A. Well, some of the machines leave the core in, they either fall in or are put in with the core in, and then some of them that someone puts back in part way, and it's put back in the water, and it goes bobbing along with the core out.

Q. And do you know why, or have you observed any—Strike that. [434]

Have you observed anybody doing that?

A. No, not just that type of apple.

Mr. Berke: Well, in view of that last answer, I move her previous one be stricken, not based on her knowledge.

Trial Examiner: Read the question for me, will you please.

(Question and answer read.)

(Testimony of Orice Storey.)

Trial Examiner: What do you mean by "that type of apple"?

The Witness: Well, I have seen them with faces made on them put in the water, and with little arms, but not just one core.

Q. (By Mr. Magor): All right. Would you describe now for the Trial Examiner just what you are talking about, with faces and little arms, so we will understand?

A. They take an apple and make eyes and nose and mouth on it, then insert cores on either side for arms, sometimes legs. The one I saw was minus legs, but it had two arms.

Q. When did you observe that?

A. The girl next to me made it.

Q. Who was the girl next to you??

A. Marjorie Byrd.

Q. And when was this?

A. During the '54 season.

Q. How long before you were discharged, do you know that? A. Some six weeks.

Q. Where did you observe the apple? [435]

A. She put that one in the water, made three others and sat them on the machine in front of us.

Q. What happened to the one that she put in the water, if you know? A. It floated away.

Q. And you say she made others and put them on the machine? A. Yes.

Q. And would you describe those, so the Trial Examiner will know what you are talking about?

(Testimony of Orice Storey.)

A. She made little eyes and nose and mouth and ears.

Q. And how would she make the eyes and the nose and the mouth and the ears?

A. With the trim knife.

Q. And would she take pieces out of the apple to make that?

A. Pieces out, and then take a piece of peel and even put in colored eyes with peelings.

Q. And where did you observe those apples?

A. Along in front of the machine, in front of where we stood to work.

Q. All right. Now, what machine are you talking about? A. The peeling machine.

Q. Now, was any representative of management, to your knowledge, present, or did they observe those apples? A. Yes.

Q. Will you tell us who it was? [436]

A. Edna Hardin.

Q. What was said, if anything?

A. She told Marjorie Byrd that she made the prettiest dolls of all; everybody made them but hers were best.

Q. Was Marjorie Byrd ever discharged for decorating apples, to your knowledge? A. No.

Mr. Magor: You may examine.

Trial Examiner: Before you begin, I just want to get clear on that one thing. I'd like to know whether or not that was a part of Edna Hardin's statement, or whether that was something that you

(Testimony of Orice Storey.)

added as an explanation, that everybody made them but hers were best.

The Witness: She said that.

Trial Examiner: All right. Mr. Berke?

Cross Examination

Q. (By Mr. Berke): What date was this that Mrs. Hardin said this?

A. I don't recall the date.

Q. What time of the day was it?

A. During working hours.

Q. What time? A. I don't know.

Q. You don't know the date, you don't know the time of day. Now, the statement you attribute to Mrs. Hardin are her exact words, word for word?

A. To the best of my knowledge. [437]

Q. Those apples that Mrs. Hardin referred to were not apples that were put in the water to go down the line, were they? A. No.

Q. Where were they?

A. On the machine in front of us.

Q. Now, Mrs. Storey, as I understand it, there is a ladies' restroom and a ladies' lounge; is that two or one room? A. Two.

Q. Two rooms. And what is in the ladies' restroom?

A. The toilets and the wash basins.

Q. I see. And what is in the lounge?

A. Two cots.

Q. Any chairs? A. No.

Q. But two cots? A. And a table.

(Testimony of Orice Storey.)

Q. Yes. You didn't use the ladies' lounge the day you were ill, that you left early, did you?

A. The 25th?

Q. Yes. A. No.

Q. You didn't go in there and lie down on those cots, did you?

Mr. Magor: Object to it, on the ground it is immaterial.

Mr. Berke: Well,— [438]

Trial Examiner: Overruled.

The Witness: The night shift employees were seated—

Q. (By Mr. Berke): Just answer my question, please. You did not go in there to use those cots?

A. I couldn't get in.

Q. You couldn't get in?

A. It was full of people.

Q. Did you try to go in?

A. I looked in the door.

Q. When?

A. When I came back from the parking lot.

Q. I see. You didn't testify under direct examination that you made any effort to go in the lounge, did you? A. No.

Q. Now, does your job require you to stand at your position? A. Yes.

Q. And you were quite ill that day, you say, is that right? A. Yes.

Q. And you were ill the day before?

A. Yes.

Q. So ill that you felt you couldn't stand at your

(Testimony of Orice Storey.)

work and had asked Mrs. Hardin, your floorlady, to allow you to leave before your shift was over, is that right? A. Yes.

Q. However, despite the fact that you were ill, you stood [439] there at the application desk, as you call it? A. Yes.

* * * * *

Q. (By Mr. Berke): Mrs. Storey, I show you a document marked for identification as Respondent's Exhibit No. 1, which purports to be your time card for the week ending September 25th, 1954, and ask if you have ever seen that card before?

A. Yes.

Q. And you saw it as recently as yesterday, did you not? [440] A. Yes.

Q. It was shown to you by Mr. Magor?

A. Yes.

Q. Is that where you got the 11:24 from?

A. No.

Q. Isn't that the time on the card that you saw yesterday? A. Yes, yes.

Q. And so, as I understand it, for approximately—well, strike that.

What time did your husband's shift end that day?

A. Twelve.

Q. So, as I understand it, for approximately thirty-six minutes or so you stood there at the application desk?? A. Yes. [441]

* * * * *

Q. Now, you were trying to get Mr. Martini to meet with Roy Rhodes, was that your object?

(Testimony of Orice Storey.)

A. The Union representatives.

Q. Well, what was the language you used when you were talking to Mr. Martini about it?

A. Could you explain that, please?

Mr. Berke: Will you read the question, please.

(Question read.)

The Witness: Union representatives.

Q. (By Mr. Berke): And what did you want him to do about the Union representatives, just tell us what you said.

A. I asked him if he would meet with the Union representatives in regards to an immediate election. He said no, he would not.

Q. Go ahead, was there anything more to the conversation?

A. Said that he would, was willing to have an election, but he couldn't until the Board decided.

Q. And at the time that you made this request of Mr. Martini, you knew that there was a proceeding pending before the National Labor Relations Board, did you not? [459]

* * * * *

The Witness: I knew that we wanted an election.

Q. (By Mr. Berke): The question was, you knew, Mrs. Story, at that time that there was a proceeding pending before the National Labor Relations Board concerning an election among the employees at that plant, did you not?

A. I knew of something, but not exactly what.

Q. Well, you were a member of the day shift committee of Sagu, were you not? A. Yes.

(Testimony of Orice Storey.)

Q. And you went to Union meetings pretty regularly, did you not? A. Yes.

Q. And at those meetings there were reports made, were there [460] not, about what was going on in connection with organizing the employees at Sagu? A. Yes.

Q. And wasn't the matter of the proceedings before the National Labor Relations Board discussed? A. Yes.

Q. So then you did know that at the time you put the question to Mr. Martini, that there was a proceeding pending before the National Labor Relations Board?

Mr. Magor: Just a moment. I am going to object to it on the ground it is argumentative, that it's been asked and answered. She said she knew there was some proceeding, or some proceeding before the NLRB.

Trial Examiner: Overruled.

Go ahead and answer it.

The Witness: I knew there was something pending. I don't recall exactly what.

Q. (By Mr. Berke): I see. Is your memory better on some things than it is on others, Mrs. Storey?

Mr. Magor: Objected to as argumentative.

Trial Examiner: Overruled.

A. Certain dates, yes. [461]

* * * * *

Q. (By Mr. Berke): Will you tell us all the conversation as near as you recall it that you had

(Testimony of Orice Storey.)

with Mr. Martini on that particular occasion, talking now about the conversation relating to the meeting with Union representatives.

A. I asked him if he would consider meeting the Union representatives in regards to an immediate election. He said no, and that he was willing to have an election, but he couldn't until the Board decided. [462]

* * * * *

Q. You didn't say anything at all after that?

A. I may have, but I don't recall it.

* * * * *

Q. You didn't? Now, following September 25th, the day you were discharged, you say you came back to the plant the next Monday? A. Yes.

Q. Now, and your purpose in coming back was to find out [464] whether you actually had been discharged, was that it? A. Yes.

Q. And you say you talked to Mr. Martini on that occasion? A. Yes. [465]

* * * * *

Q. Did you go back there on your own, or did you talk over the situation before you went back on that Monday with one of the Union representatives? A. I did.

Q. You did? With whom? A. Mr. Grami.

Q. And was it Mr. Grami that suggested you go back?

A. He said since they hadn't told me definitely that I was fired, perhaps I wasn't.

Q. Mr. Grami told you to go back and see if

(Testimony of Orice Storey.)

you could find out whether you were fired for union activity? A. No.

Q. Did he say anything to that effect?

A. No.

Q. Was Mr. Grami with you when you went back? A. No.

Q. Was there anyone from the Union with you when you returned that Monday?

A. You mean as I talked to Mr. Martini?

Q. Not as you were standing there, but did anyone come into the plant with you?

A. Mr. Bertolucci.

Q. He is the Union representative? [468]

A. Yes.

Q. Where was he at the time? That you arrived there? A. He left me off at the highway.

Q. And did he remain in his car?

A. He drove away.

Q. You saw him drive away? A. Yes.

Q. After you finished talking with Mr. Martini, did you turn around and make a sign with your hand to anyone? A. I don't recall.

Q. You don't recall? Don't you recall putting your index finger and your thumb together and turning around after you finished talking with Mr. Martini and making this kind of a motion with your hand, which generally indicates everything is fine, or you got what you wanted?

Mr. Magor: Just a moment.

Q. (By Mr. Berke): Do you recall making that—

(Testimony of Orice Storey.)

Mr. Magor: Mr. Berke would like to testify, I know. That is asking for an opinion and conclusion of the witness.

Trial Examiner: Sustained.

Q. (By Mr. Berke): You know what that sign is that I have just made, don't you? You have seen that sign made before, haven't you?

A. I have made it.

Q. You have made it? [469] A. Yes.

Q. Now that we have qualified her as an expert, maybe we can go ahead.

Did you make that sign that day after finishing talking with Mr. Martini?

Mr. Magor: Just a moment. I object to it on the ground that it is vague and indefinite and unintelligible for the record.

Mr. Berke: I have already described it for the record.

Trial Examiner: Overruled.

Q. (By Mr. Berke): You say you don't recall? Was that your answer? A. I don't recall.

Q. You don't recall. As a matter of fact, Mrs. Storey, you went back there for the express purpose to see if you couldn't find out—— Strike that.

As a matter of fact, you went back there for the express purpose of trying to determine whether you had been fired for Union activity, isn't that correct?

A. Went back to find out if I was fired. [470]

* * * * *

Q. (By Mr. Berke): Mrs. Storey, I show you again Respondent's Exhibit 1 for identification,

(Testimony of Orice Storey.)

which is your time card, is it not? A. Yes.

Q. The date that appears on there and the times are stamped on there at the time clock, are they not? A. Yes.

Q. And you are the one that inserts the card and stamps it, punches the clock? A. Yes.

Mr. Berke: I offer Respondent's 1 in evidence.

Trial Examiner: Any objection?

Mr. Magor: No, sir. [473]

* * * * *

Q. (By Mr. Berke): Mrs. Storey, during the time that you worked at Sagu last year, you saw a fork-lift in operation, did you not? A. I did.

Q. And would this fork-lift be in operation in the cannery where you were working? A. Yes.

Q. And is it correct to say that the fork-lift, during working time and during the period that you were working there, was constantly moving in and around the cannery, moving tanks and other items? A. Yes.

Q. And is it correct that the fork-lift would move or raise tanks of apples to the top of the blancher? A. Yes.

Q. And you saw that while you were working there, did you not? A. Yes. [474]

* * * * *

Q. (By Mr. Berke): Is that blancher that you saw the fork-lift raise the tank of apples to the same as the one that is indicated on here as blanch?

A. Yes.

Q. And that is the one here where you have

(Testimony of Orice Storey.)

put the "S" in a circle, is that right? A. Yes.

Q. You have seen these tanks both when they are empty and when they are filled with apples and water, have you not? A. Yes.

Q. They are pretty large tanks, are they not?

A. Yes.

Q. Do you have any idea about what they weigh?

A. No.

Q. Do you have any idea about what their capacity is? A. No.

Q. And I take it that during the time that you worked there, Mrs. Storey, you saw the fork-lift move in and out with tanks, either empty or filled with apples, to the point where you were standing when you talked with Mr. Martini about meeting with Union representatives? A. Yes.

Q. Mrs. Storey, how do the women there work, or—at the [475] time, I should say, while you were working there, how did the women who were working on the slicing machines stand, that is, what direction were they facing?

A. They would face to the east.

Q. Looking at General Counsel's Exhibit 23, will you note "Slicing Units" indicated on there. Now, is that where the slicing machines are, or were at the time you worked there? A. Yes.

Q. And then you will also note "Inspection Slices;" is that the inspection belt or the inspection station, or what is that? A. Yes.

Trial Examiner: Inspection belt?

The Witness: Yes.

(Testimony of Orie Storey.)

Q. (By Mr. Berke): When you saw the women working on the slicing machines, facing east, is it correct that they would be looking toward the balcony or towards the restrooms? A. Yes.

Q. And that would be toward the time clocks also, would it not? A. Yes.

Q. While you worked there, do you know whether one of the women working on the slicers was injured? A. On the slicer?

Q. Yes, on the slicing machines.

A. No. [476]

Q. You don't recall, or you don't know?

A. I don't recall.

Q. Did you know Marie Scheffler while you worked there? A. Yes.

Q. Does that refresh your recollection now, that she was injured?

A. Not on the slicer you indicated.

* * * * *

Q. (By Mr. Berke): What was she injured on?

A. On the chopper, chopper we refer to it.

Q. And where is the chopper located?

A. It is upstairs.

Q. Upstairs, whereabouts? [477]

A. We refer to it as upstairs.

Q. When you say "We refer to it," who do you mean, the employees? A. The employees, yes.

Q. Well, where was it upstairs?

A. When they ~~were~~ making applesauce, the apples go up an elevator to a belt, inspection belt there.

(Testimony of Orice Storey.)

Q. Well, is there another floor or something that you can refer to?

A. Well, it is elevated from the floor where I worked.

Q. How high up above the floor?

A. Oh, perhaps ten.

Q. Ten what? A. Ten feet. [478]

* * * * *

Q. (By Mr. Berke): Now, Mrs. Storey, you mentioned during the time you worked there on some occasions you saw dolls made [485] into apples—or, rather, apples made into dolls, is that correct? A. Yes.

Q. Now, were these apples made into dolls during working time? A. Yes.

Q. When did you see it—on more than one occasion? A. Yes.

Q. When was the first occasion that you saw it?

A. I don't recall the date.

Q. When was the second occasion?

A. I don't recall the date.

Q. When was the third occasion?

A. Various times, I don't recall the dates. [486]

* * * * *

Q. (By Mr. Berke): Now, do you know where these apples came from that were used to make these dolls? A. They were peeled apples.

Q. They were peeled; but where did they come from, do you know where the people got them from?

(Testimony of Orice Storey.)

A. The trimmers would pick them up off the bin in front of them.

Q. You saw them do that in each instance through all these weeks that you have testified about? A. No.

Q. So then you are assuming in large part that they got them from the bins, is that correct?

A. They would be there, yes.

Q. Again I ask, you are assuming that, are you not? A. Yes.

Q. Could those apples have been apples that were picked up off the floor by the employees who made them into dolls?

Mr. Magor: Just a moment. Objected to on the ground it asked for an opinion and conclusion of the witness, hypothetical.

Q. (By Mr. Berke): Well, if you know.

Trial Examiner: Well, there hasn't been any evidence that—well, I may be wrong. Overruled.

Mr. Berke: This is cross examination. [488]

Trial Examiner: Go ahead.

Mr. Berke: Do you want the question again?

The Witness: Yes, please.

Q. (By Mr. Berke): Do you know whether those apples were apples that were picked up off the floor by the employees who made them into dolls?

A. I'd say no.

Q. You'd say no. Is that because you know where they came from, you have personal knowledge? A. I didn't see them pick them up.

Q. Yes. So then again it is an assumption on

(Testimony of Orice Storey.)

your part that they were not picked up off the floor, isn't that correct? A. Yes. [489]

* * * * *

Recross Examination * * * * *

Q. (By Mr. Berke): Did I understand you to say, when the Trial Examiner asked you about that mouse you related, with reference to Mr. Bondi, that you didn't see the mouse?

A. I saw the mouse.

Q. Oh. When did you see it?

A. He picked it off the belt where I was sorting fruit, and put it in a tin can and walked over and put it in the flume. [504]

Q. It was a live mouse? A. Yes.

Q. That was on the belt? A. Yes.

Q. He hadn't put it on the belt, had he?

A. No, it came from a box of apples.

Q. In what? A. A box of apples.

Q. Oh, sometimes a mouse will come in with the apples that are brought in from the outside and dumped into the flume? A. Yes.

Q. That has been known to happen, hasn't it?

A. Yes.

Q. And that mouse, as far as you know, may have come from the orchard where the apple was picked and gotten into that box?

A. Yes. [505]

* * * * *

Q. (By Mr. Berke): You saw the apples here yesterday, did you not, that Mr. Martini had?

(Testimony of Orice Storey.)

A. Yes.

Q. And you saw one of them with two holes in it?

Trial Examiner: One vertical and one horizontal.

Mr. Berke: One vertical and one horizontal, almost at right angles to each other. [508]

* * * * *

Q. (By Mr. Berke): Did you see that apple yesterday? A. Yes.

Q. And you saw one of the two holes had a core inserted or plugged into it, did you not?

A. I was quite a ways away from it.

Q. But you did see it? A. Yes.

Q. Yes. Now, did you see an apple in that condition before yesterday?

A. I don't recall. [509]

* * * * *

EVA M. LEE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * *

Q. (By Mr. Karasick): Was there any meeting of the employees at which they were addressed by management at the time of the lay-off in 1953?

A. No.

Q. What shift was—well, strike that.

As far as you know, were the employees who were laid off chosen from one or both of the shifts then working up to that time?

(Testimony of Eva M. Lee.)

A. Well, most of the night shift was laid off and the day shift was kept on. [520]

* * * * *

Q. After you began working for the Respondent in 1954, did you sign a Union authorization card? A. I did.

Q. Do you remember the date?

A. No, I don't.

Q. Remember how long it was after you began work in 1954?

A. About four weeks, about a month. [522]

* * * * *

Q. Now, before you were laid off there on October 15th, did you hold any other position, other than peeler? A. Yes, I did.

Q. What position? A. Floorlady.

Q. And when were you made floorlady?

A. The morning of the 14th of October.

Q. And will you explain to the Examiner how that came about?

A. I was peeling and Steve Struempf came and asked me if I'd take over as floorlady.

Q. Who was Steve Struempf?

A. I wouldn't know. I thought he was the foreman, but I don't know.

Q. What made you think he was foreman?

A. Well, because he came and asked me if I thought—well, because I thought he was the foreman and I thought I should take orders from him, which I did.

Q. All right. Now, he came to you the morning

(Testimony of Eva M. Lee.)

of the 14th, you say? [523] A. Yes.

Q. And, to the best of your recollection, what did he say to you?

A. He asked me if I'd take the floorlady job, and I said I would, till they could get someone else, and I was wearing my Union button and I asked him if I could wear my button, and he said I could, he didn't care; and I said, well, what should I do, and he said, well, just take over, just like Edna did.

Q. Did he tell you at that time that there would be a lay-off the next day? A. He did not.

Q. Now, you say you were wearing your Union button? A. I was.

Q. Where did you get these buttons?

A. Got them at the Union Hall, Labor Temple.

Q. And when?

A. The night of the 13th of October. [524]

* * * * *

Mr. Karasick: I offer the button in evidence as General Counsel's Exhibit 31.

Trial Examiner: Any objection?

Mr. Berke: I object to it. It is irrelevant and immaterial in the light of the testimony.

Trial Examiner: I will receive it. Have a second one?

Mr. Karasick: I will have a duplicate.

(The object heretofore marked General Counsel's Exhibit No. 31 for identification was received in evidence.)

Q. (By Mr. Karasick): Now, had there been any other time before October 13th that the Union,

(Testimony of Eva M. Lee.)

to your knowledge, had handed [525] out buttons such as that to the employees at the plant?

A. No, there wasn't that I knew of, no.

Q. And when was it that button was handed out to you? A. The night of the 13th.

Q. Where?

A. At the Labor Temple in Santa Rosa.

Q. At what? A. Meeting.

Q. And was it handed out to the other employees at that meeting? A. Yes.

Q. Or were they handed out. On October the 15th, 1954, did you come to work as usual?

A. I did.

Q. Were you informed during the course of the day that there would be a meeting that day called by the Company? A. Yes, I was.

Q. Who informed you of the meeting?

A. Steve Struempf.

Q. What did he tell you?

A. Came around to me and told me to go tell the girls there would be a meeting across the street after work, and for us all to attend.

Q. And across the street, would you say where across the street? [526]

A. At the warehouse.

Q. What time of the day did he tell you about this?

A. Three, around three o'clock, approximately three o'clock.

Q. At that time did he tell you it would be a meeting regarding a lay-off? A. He did not.

(Testimony of Eva M. Lee.)

Q. At any time until you got into the meeting, did anyone from Management, prior to then, tell you there would be a lay-off that day?

A. No, they didn't.

Q. Now, did you go to the meeting?

A. Yes, I did.

Q. Did you inform the women under you to go?

A. I did.

Q. When you got there, who was there, with respect to Company representatives?

A. Mr. Bondi—

Q. That is Tony Bondi? A. Tony Bondi.

Q. And his position then was Chairman of the Board of Directors? A. I wouldn't know.

Q. I see. Very well. Who else?

A. Bill McGuire, Elmo Martini, and that's the only ones that I really knew. Ella Herrerias. [527]

Q. Ella was there? A. Yes.

Q. Do you know Mr. Duckworth?

A. Yes, I do.

Q. Was he there? A. Yes, he was.

Q. Now, as well as you can now recall, will you tell the Examiner what was said at that meeting.

A. Well, Mr. Bondi said that there was going to be a lay-off, he was sorry, but the warehouse was full, and he was going to have to cut down on help, and they was going to let some of us go.

Q. Do you recall anything else that was said at that time? A. No, I don't.

Q. Were the names of employees read?

A. Yes.

(Testimony of Eva M. Lee.)

Q. Now, this list of names that Mr. McGuire read, did they tell you what it would mean if your name was on the list?

A. He said if our names wasn't read, we'd known we was dismissed.

Q. Let's see if I understand; if your names were not read, you were being——

A. If the names were read, we'd be dismissed, we wouldn't have no more jobs.

Mr. Berke: Could I have that?

(Answer read.) [528]

Q. (By Mr. Karasick): Now, did Mr. Martini make any remarks at that meeting?

A. Yes, he did.

Q. Well, tell us what he said as well as you can now remember.

A. Well, he said he was sorry he had to let us go, it wasn't our work that wasn't satisfactory, and that he was letting us go according to seniority, and that he was sorry but he'd see us all next year, and he'd also see us at dinner, we were supposed to be invited too.

Q. Do you know what this dinner was?

A. Well, it was a dinner they have at the end of the season, every year.

Q. Had they had a dinner at the end of the season for the employees that worked there that season, in 1953? A. Yes.

Q. Now, do you know whether they had a dinner in '54 at the end of the season?

A. Yes, they did.

(Testimony of Eva M. Lee.)

Q. Were you invited?

A. No, I wasn't.

Q. Do you remember anything else said at that meeting, whether by Mr. Martini or anyone else?

A. No, I don't.

Q. Do you remember whether—in order to refresh your recollection, do you remember whether there was anything said about caps? [529]

A. Oh, yes, there was, they said that anybody that had caps—

Mr. Berke: Wait a minute. May we have who—"they"?

Trial Examiner: This is the same time.

Mr. Karasick: Let her finish, and I will get it for you, Counsel.

Trial Examiner: Is this Mr. Martini speaking now?

Mr. Karasick: I don't know, but I will find out as soon as she finishes. Let's have the statement and I will develop who it is, if she can recall.

The Witness: Mr. Martini said if there was any caps and aprons to turn them in at the office across the street.

Q. (By Mr. Karasick): Now, did you turn in your cap and apron? A. I did not.

Q. Why not?

A. Because they belonged to me.

Q. Now, the caps and aprons you refer to were different than yours in what respect?

A. They was the same thing, only I bought them the year before.

(Testimony of Eva M. Lee.)

Q. Well, what I mean is, did some of the employees put a deposit on the caps and aprons which the Company would let them use to work?

A. Yes.

Q. And then they would return them at the end of the season or whenever they quit work and get a deposit back, is that what you [530] are referring to? A. Yes, that's right.

Q. All right. Now, do you recall whether Mr. Martini read a letter at that time, at that meeting?

A. No, he did not read the letter, he didn't read the letter, Mr. Bondi read the letter.

Q. There was a letter read? A. Yes.

Q. Did you get a copy of the letter later?

A. In the mail, yes, with my check.

Mr. Karasick: Where is Martini's letter here?

Q. (By Mr. Karasick): I show you now, Mrs. Lee, General Counsel's Exhibit 25.

Mr. Berke: Before you go to that, what was her last answer? May I have it?

Trial Examiner: Read it.

(Answer read.)

Q. (By Mr. Karasick): I show you now, Mrs. Lee, General Counsel's Exhibit 25 and ask you to look at that letter and tell me if you can recall whether this is the letter that you referred to, that you received in the mail? A. It is.

Q. Has anyone——

Trial Examiner: Do you mind asking her the date she received it? [531]

(Testimony of Eva M. Lee.)

Mr. Karasick: Not at all. Would you answer the Examiner's question.

The Witness: Well, we were laid off on a Friday and the checks came the following Monday.

Q. (By Mr. Karasick): And the letter was with the check? A. Yes.

Q. Thank you. Had anyone in 1954 ever told you that Steve Struempf was a supervisor?

A. No.

Q. Did you apply for work at the Sebastopol Apple Growers Union this year?

A. Yes, I did.

Q. Did you go down and make out—fill out an application form? A. I did.

Q. I show you General Counsel's Exhibit 26 and ask you if that is the application form that you filled out when you went down there this year?

A. It is.

Q. When did you go, remember the date?

A. I went down the 13th of June.

Q. And you have not been recalled?

A. I have not.

Q. Do you know if they ever called some employees there at the plant, have you ever heard?

A. Yes, they have called some of them back, yes.

Q. And how do you know that?

A. Well, because the girls called me up and told me they were working.

Q. While you were employed there during the 1954 season, did you serve on any position or any committee for the Union? A. I did.

(Testimony of Eva M. Lee.)

Q. What committee?

A. I was just on the General Committee.

Q. General Committee; which shift?

A. The day.

Q. Can you remember some of the other employees there who served on the committee with you during the 1954 season? A. Yes.

Q. Would you name as many as you can recall now? A. Mary Russell.

Mr. Berke: Mary who?

The Witness: Mary Russell, Lila Layman, Beulah Lindley, Elsie Dickerson, Gloria Pate, Gloria Lindsey, Orice Storey, Clarence Storey, Leonard Lee. There was numerous others; I don't recall the names of the others.

Mr. Berke: I didn't hear that. I'm sorry.

The Witness: I said there were numerous others, that I don't recall their names.

Q. (By Mr. Karasick): What was the purpose of this committee on which you served? [533]

A. It tried to organize the Union, to get the Union into the canneries.

Q. By what means?

A. By going out and getting new members.

Q. I see. Now, while you also were employed, prior to the lay-off in 1954, did Ella Herrerias ever say anything to you about the Union? A. Yes.

Q. On one occasion or more than one occasion?

A. Two that I recall.

Q. Directing your attention to the first of these occasions, do you remember when that was?

(Testimony of Eva M. Lee.)

A. It was approximately three weeks before we were laid off.

Q. Do you remember where you were at the time? A. Yes.

Q. Where were you? A. In the plant.

Q. Can you remember the specific part of the plant?

A. Well, it was—well, down by where the time clocks was, where we—the benches that we sat on during recess.

Q. And was anyone else present besides you and Ella at the time?

A. Numerous—bunch of people, but I don't recall any of their names offhand. [534]

Q. Now, will you tell us at that time what Ella said in regard to that subject?

Mr. Berke: Well, just a moment. Can we have the whole conversation, who started it and so forth.

Mr. Karasick: Surely.

Q. (By Mr. Karasick): You tell us how the whole conversation started and who said what, to the extent you can remember it.

A. Well, we was all sitting there on boxes, and we was talking about the Union, and she says, "Don't get my girls all excited about the Union because," she says, "if you do," she says, "you are going to get black-balled from every job around here," she said, and she kept telling us not to talk about the Union, and she threatened us if we did we would be out of a job.

Mr. Berke: Wait a minute.

(Testimony of Eva M. Lee.)

Trial Examiner: Don't characterize, just say what she said.

Mr. Berke: Move that go out.

Trial Examiner: The words "she threatened us" may be stricken.

Mr. Karasick: All right.

Q. (By Mr. Karasick): Now, what the Examiner is directing your attention to is this, Mrs. Lee. You are to tell us only what she said. Now, did she say anything about being threatened, did she say anything about threats? A. No.

Q. All right. Do you remember anything else she said now, [535] other than this conversation you have given us about blackballing?

A. Yes, we'd lose our jobs, we'd all—we'd all be laid off if we didn't quit talking about the Union.

Q. She said that to you? A. She did.

Q. All right. Now, when was the second occasion in which Ella made reference to this subject?

A. That was several nights later, we was talking—

Q. Now, where were you at the time?

A. I was in the restroom.

Q. Now, was this during the day or at night?

A. It was in the daytime.

Q. When was the first occasion?

A. It was in the daytime, when we broke down, in the daytime, about four o'clock in the afternoon.

Q. About four o'clock? A. Yes.

(Testimony of Eva M. Lee.)

Q. Would that be toward the end of the shift then? A. Yes.

Q. All right. Now, to be sure we don't get confused, the four o'clock was which occasion, the first or second? A. The first one.

Q. The first? A. Yes. [536]

Q. Now, directing your attention to the second occasion, Mrs. Lee, about what time was that, do you recall?

A. It was just as we got through work, and I don't know whether it was five minutes to five—about five minutes to five.

Q. Do you remember?

A. Well, it was when the day shift went off work, and sometimes we went at four and sometimes at four-thirty.

Q. I see. All right. Now, on that occasion, where did you say you were? A. In the restroom.

Q. Were there other persons present besides you and Ella? A. Yes, there was.

Q. Do you know who they were?

A. No, I don't. They was coming and going all the time, so I don't recall who they were.

Q. I see. Now, as well as you can presently recall, will you tell us what the conversation was and who said what on that occasion?

A. Well, she says, if you girls don't quit talking about the Union, she says, and if the Union does get in here, she says, if you think I am tough, you wait till next year and I will show you how tough I can be.

(Testimony of Eva M. Lee.)

Q. Now, has the Company in 1953 and 1954 while you worked there followed a practice of selling its products to employees? [537] A. Yes.

Q. Have you ever bought any of the Company's products? A. I have.

Q. What have you bought?

A. I have bought applesauce and pie apples, both.

Q. Have you bought any that were made up during the 1954 season? A. Yes, I have.

Q. And in the 1953 season, too? A. Yes.

Q. Have you ever found any sort of imperfections in the pie apples or applesauce that you have used? A. I have.

Q. What have you found?

A. I have found a worm in the pie apples on several occasions, and I have found pieces of core and pieces of calyx in the applesauce many a time.

Q. What is calyx?

A. That is the blossom end of the apple.

Q. Have you ever found any seeds?

A. I have. [538]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Berke): Now, Steve Struempf was a mechanic, was he not, as far as you knew?

A. As far as I know, yes.

Q. Yes, and that was his job, he repaired machines? A. Yes.

Q. And when was it you say that Steve

(Testimony of Eva M. Lee.)

Struempf came up to you and talked to you about you were going to be floorlady?

A. 14th of October.

Q. What time of the day was it?

A. Ten o'clock in the morning.

Q. And what were the words, as near as you recall?

A. He asked me if I would take over as floorlady. I said yes I would, till he could get someone else.

Q. Did he tell you that Mr. Duckworth sent him out there to ask you if you would?

A. No, he didn't. [542]

Q. Pardon me? A. No, he didn't.

Q. Do you know whether Mr. Duckworth sent him out? A. No, I don't.

Q. Now, it was you that brought the Union button to Mr. Struempf's attention, is that right, on that day?

A. I asked him if I could wear my Union button if I was floorlady.

Q. Yes, you were the one that mentioned it?

A. Absolutely.

Q. Yes, and his answer was what?

A. Do you want the words he said?

Q. Well, what was it he said?

A. He said, "I don't give a damn how many buttons you wear."

Q. Fine. He didn't tell you to take the button off, did he? A. He did not.

Q. Did Mrs. Herrerias tell you to take it off?

(Testimony of Eva M. Lee.)

A. She wasn't there.

Q. Mr. Duckworth tell you to take it off?

A. No, he didn't.

Q. Anyone representing management tell you to take the button off? A. No, they didn't.

Q. Anyone representing management come to you and ask you why you were wearing the button?

A. No, they didn't. [543]

Q. Now, you knew, did you not, Mrs. Lee, in 1954 there was a new manager at the head of the cannery? A. Yes, I did.

Q. And that was Mr. Martini?

A. Yes, sir. [544]

* * * * *

Q. (By Mr. Berke): At this meeting of the employees on October the 15th, Mr. Bondi, in his talk, you say, stated that he was sorry that there was going to have to be a lay-off? A. Yes.

Q. And he gave the reason why? A. Yes.

Q. What did he say, as near as you can recall?

A. Said the warehouse was full and they didn't—wasn't able to keep on, the apples were getting short, and there wasn't enough apples to keep two shifts going.

* * * * *

Q. Did anyone at that meeting say to the employees that worked on the night shift that they were not to complete the night shift?

A. No, they didn't.

Q. No one said that at that meeting while you were present? A. No, they didn't. [553]

(Testimony of Eva M. Lee.)

Q. And did anyone tell you to tell any of the employees at the meeting that they were not to complete their shift? A. No, they didn't.

Q. As far as you knew, the night shift was to complete the shift that night? A. That's right.

Q. Now, Mrs. Lee, I think you said that in 1953, when the Company went—or, reduced from two shifts to one shift, that most of the night shift was laid off? A. That's right.

Q. As far as you know then, some of the night shift did go on that single shift that worked after that? A. Very few.

Q. Well, whether few or not, as far as you know I am asking, some of the people that worked on the night shift did go on that single shift? A. Yes.

Q. That was in 1953? A. Yes. [554]

* * * * *

Redirect Examination * * * * *

Q. (By Mr. Karasick): You said you wore a Union button; where did you wear them?

A. On the lapel of my blouse, two of them.

Q. Were they in plain view or concealed?

A. They wasn't concealed by anything. [555]

* * * * *

Recross Examination

Q. (By Mr. Berke): Would you say that the people in 1953 who were on the night shift and went on this single shift were picked because they had been there long? A. Yes.

Q. Were you told that by management?

A. Yes.

(Testimony of Eva M. Lee.)

Q. Whom? A. Ella Herrerias.

Q. When did she tell you that?

A. When we were laid off.

Q. What did she tell you?

A. Well, she said there were going to be a few of them kept on because they had been there four years.

Q. She said there were a few going to be kept on? A. Yes.

Q. Because they had been there how long?

A. Since the plant opened.

Q. No, what was the language you used before?

A. Well, it would have been four years last year.

Q. What was the language Mrs. Herrerias used to you, Mrs. Lee?

A. She said she was going to keep them on because they had seniority, they had been there since the plant opened.

Q. Didn't you say a moment ago she said they were going to keep them on because they had seniority, they'd been there four years? A. No.

Q. You say you didn't so testify?

A. I said that because—I was wrong, because they hadn't been there four years.

Q. And you may be wrong now about what you say Mrs. Herrerias said?

A. No, I am not wrong.

Mr. Berke: I have no further questions.

Mr. Karasick: That's all.

Trial Examiner: I have one. You say that if you were working longer than the regular quitting

(Testimony of Eva M. Lee.)

time, after the regular quitting time, because you started later in the morning, that the night shift had to stand around and wait during that time; where would the people on the night shift stand?

The Witness: Well, like the most of us, was outdoors, and some in the restrooms, in the two restrooms.

Trial Examiner: Did they use the benches at all?

The Witness: Yes, they did. [560]

Trial Examiner: Did they stand, in addition to sitting, around the benches?

The Witness: No, because they weren't supposed to stand around the machinery or anything. We were supposed to stay out of the way of all the machinery, and sit down on the bench, or others go in the restroom.

* * * * *

Further Recross Examination

Q. (By Mr. Berke): You say you weren't supposed to stand around because of the machinery; was that told to you? A. No.

Q. How do you know that?

A. Well, just because we knew better than that.

Q. Because it was a dangerous place to be when things were going, is that right?

A. Well, I imagine, yes. [561]

* * * * *

MARY RUSSELL

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * *

Q. (By Mr. Magor): Miss Russell, were you ever employed by Sebastopol Apple Growers Union?

A. Yes.

Q. Do you recall when it was that you were first employed by that Company?

A. On or about July the 23rd or 24th.

Q. Of what year? A. Of '54.

Q. Of 1954. Was that the first time you were employed by the Company? A. Yes. [562]

* * * * *

Q. (By Mr. Magor): And when was it you first went to work, to the best of your recollection today, you first physically worked at the Company?

A. To the best of my recollection, it was the 23rd of July.

Q. What shift were you working on at that time? A. Night shift. [563]

Q. And, to the best of your recollection today, what hours were you working?

A. From four p.m., to 12:30, the best I can recall.

Q. Who was your floorlady at that time?

A. Ella Herrerias.

Q. What was the last day that you worked for the Company? A. October 15th, 1954.

(Testimony of Mary Russell.)

Q. How do you refer to the Company?

A. Sagu.

Q. Sagu. Did you sign any Union authorization card during the time that you were working for the Company? A. Yes.

Q. Do you recall when it was that you signed a card? A. On or about August the 10th.

Q. On or about August the 10th? A. Yes.

Q. Of what year? A. 1954.

Q. I show you General Counsel's Exhibit No. 28 in evidence, Miss Russell, and, overlooking the writing in ink on that card, is that card similar to the one that you signed? A. Similar, yes.

Q. What did you do with the card after you signed it?

A. I gave it back to Joy Bertolucci, from whom I obtained it.

Q. Who is she? [564]

A. Well, she was one of the girls passing out the cards for the Union.

Q. Where were you at the time that you obtained the card? A. Out in the parking lot.

Q. And what parking lot are you referring to?

A. Sagu's parking lot.

Q. Were you a member of any union committees? A. Yes.

Q. Do you recall when it was that you were on a union committee?

A. I can't remember exactly when I first went on it.

Q. How long was it after you were first em-

(Testimony of Mary Russell.)

ployed by the Company, to the best of your recollection; was it a week, two weeks, three weeks?

A. Well, it was longer than that when I went on the committee.

Q. You say you signed a card on or about August the 10th, 1954? A. That's right.

Q. How long was it after you signed a Union card, to the best of your recollection today?

A. I don't know for sure.

Q. You do know that you were on a union committee, is that right? A. Yes, sir, I do.

Q. That is, while you were working for the Company? [565] A. Pardon?

Q. That is, while you were working for the Company? A. Yes.

Q. Can you recall who the other members of the committee were?

A. Well, Eva Lee, Lila Layman, Orice Storey, Clarence Storey, Marjorie Byrd, Ruthie Deal and Lena Ameral.

Q. How do you spell Lena Ameral?

A. A-m-e-r-a-l. Nora Ames.

Q. Do you know whether or not—and I just want your own knowledge—whether that was the first union committee? A. Yes, it was.

Q. During the time that you were employed by Sagu, did you work on the night shift all the time?

A. No. About the 10th—from the 10th to the 13th of September I was on days, I transferred.

Q. You say it was about the 10th or the 13th of September that you transferred to day?

(Testimony of Mary Russell.)

A. The best I can remember.

Q. And from that date on, as best you can recall—either the 10th or the 13th of September—did you then work on days? A. Yes.

Q. —until you finally were laid off.

Trial Examiner: Before you go on, will you ask her whether the names she has given us referred to the day or the night committee or both. [566]

Q. (By Mr. Magor): Now, you have listed to the best of your recollection certain other employees who were on a union committee. Was that the day shift committee or the night shift committee; if you know, tell us; if not, say so.

A. Well, most of them were on the day shift committee, I mean from the day shift.

Q. Were you working on the day shift when you were on the union committee?

A. I can't remember.

Q. Did you at any time, while you were working for the Company, talk to Ella Herrerias, the floorlady, about the Union, or did she ever talk to you or in your presence about the Union?

A. Yes.

Q. Can you recall when that was, to the best of your knowledge?

A. Must have been in August sometime or the first part of September. I don't know exactly when.

Q. And what shift were you working at that time? A. The night shift.

Q. The night shift. What shift was Ella Herrerias the floorlady for? A. The night shift.

(Testimony of Mary Russell.)

Q. Where was it that this conversation occurred, physically in the plant, to the best of your recollection today?

A. Well, it was down where we were—where we went on breaks. [567]

Q. Please?

A. It was down in the plant, where we stood when we had our breaks.

Q. Where did you stand down in the plant when you had your breaks?

A. Well, they had some benches.

Q. Would you wait until this truck goes by. O.K.

A. There were some benches that were in front of the lounge, and the lounge was near the time clock.

Q. I see. Now, could you tell us to the best of your recollection who else was present, if anybody, at the time? A. Marcia Young—

Mr. Berke: What is the first name?

The Witness: Marcia.

Mr. Berke: Marcia?

The Witness: Yes. And Lea Richards.

Q. (By Mr. Magor): Do you recall anybody else as being present?

A. There were others around whose names I don't remember for sure.

Q. Did Ella Herrerias approach you, or did you approach Ella Herrerias, or what?

A. Well, what it was, she was trying to scare the girls—

(Testimony of Mary Russell.)

Mr. Berke: Just a moment. I move that be stricken.

Mr. Magor: That may go out. [568]

Q. (By Mr. Magor): Tell us what she did.

Trial Examiner: Strike it.

A. You want me to tell you in my words?

Q. (By Mr. Magor): That's right, tell us in your own words what she did, and what was said, and tell us what anybody else said at that time.

A. Well, I don't recall exactly how it started, but I do know that she said that if any of us talked union or signed pledge cards that we would immediately lose our jobs, and then she also said at the same time that if any of us attended union meetings there would be someone there from the company and that they would come back with our names from the union meeting, which would go to Mr. Martini and that we would lose our jobs.

Q. Do you know what else was said at that time, if anything?

A. I think that is about all she said at that time.

Q. Now, while you were working for the company—and when I say company I refer to Sagu, do you understand that? A. Yes.

Q. ——did Mr. Martini talk to you about the union or did he talk about the union in your presence? A. Yes.

Q. Do you recall when that was?

A. It was on the day shift, about two weeks, I would say, before the lay-off.

(Testimony of Mary Russell.)

Q. Do you recall what time of day it was? [569]

A. In the morning, at break time.

Q. At break time? A. Yes.

Q. Do you recall what time of day break time was? As best as you can recall?

A. It started about 9:30 in the morning.

Q. Will you tell us now, Miss Russell, who else, if anybody, was present at the time?

A. Lila Layman.

Q. Was anybody else present besides Lila Layman?

A. Yes, there were three or four others I know, but I can't recall their names.

Q. Was Mr. Martini present? A. Yes.

Q. Was anybody else present with him?

A. I can't remember if there was anyone with him or not.

Q. Now, tell us what occurred at that time and tell us what was said and who said it.

A. Well, one of the girls—I can't recall for sure just which one—asked Mr. Martini why he wouldn't go union, and he said that he would shut the plant down definitely before going union, and he said, "I would not pay union wages."

Q. What else was said, if anything?

A. I believe that was all that was said.

Q. Now, did you talk to Mr. Martini after that, or prior to [570] that time, or at any time in your presence did Mr. Martini discuss the union?

A. Well, one time about three weeks before the lay-off he stopped Lila Layman and myself as we

(Testimony of Mary Russell.)

were coming back into the plant after lunch—we had been out to the union car—and he asked us if we were going steady with Charlie, one of the organizers, and we said yes, taking it as a joke when he said it, and he laughed and he said, well, he said, better be careful, and he said watch out, he's a tough character.

Q. And can you tell us who Charlie is?

A. Well, he's one of the union organizers.

Q. Do you know his last name?

A. Ciolina or something like that. I am not just definitely sure how you pronounce it.

Q. Where were you coming from at the time that you talked to Mr. Martini?

A. We were coming back from the union car, which was parked off the road, just before you get to the parking lot.

Q. You say off the road; is that at the Sagu plant? A. Yes.

Q. And where was Mr. Martini when you talked to him?

A. He was standing just outside the plant door.

Q. Was anybody with Mr. Martini at the time?

A. Yes, but I don't recall who.

Q. Is he present in the hearing—was he present in the hearing room at all today? A. No.

Q. What was your purpose in going out to the car where the organizers were?

A. Find out more about the union.

Q. Was any other union organizer out there besides Charlie Ciolina, if you know?

(Testimony of Mary Russell.)

A. Yes; his first name is Jack, but I can't recall his last name.

Q. Will you tell us what time of day this was?

A. Noon.

Q. Was it during the lunch period?

A. Yes.

Q. Now, before—after that, or at any other time, did Mr. Martini discuss the union with you, or did he say anything about the union in your presence?

A. Well, various other times I have heard him make the same remarks that he had made before about shutting the plant down before going union.

Q. Do you recall when these various other times were, to the best of your recollection today?

A. Not exactly; it would be from about the two week period on up until the lay-off, throughout that period.

Q. That would be two weeks from the time of the lay-off, up until the time of the lay-off, is that it? [572]

A. Yes, two weeks before the lay-off up till the time of the lay-off.

Q. Do you recall what time of day it was that Mr. Martini said that, to the best of your recollection today?

A. No, I can't recall the time.

Q. Do you recall who else, if anybody, was present at the time?

A. All I know, I can remember, is that there was groups of people there, but what their names were, I can't remember.

(Testimony of Mary Russell.)

Q. Was anybody with you at the time?

A. That one time I know Lila Layman was with me. The other times I'm not sure who.

Q. What was the last day on which you worked for the company? A. October 15th, '54.

Q. What occurred on that— Strike that.

Was there a meeting held on October 15th, 1954?

A. Yes.

Q. And were employees named who were to be retained and those who were not to come to work?

Mr. Berke: Just a moment. I move to strike that on the ground that the question is leading and suggestive.

Mr. Magor: I withdraw the question.

Q. (By Mr. Magor): Why didn't you return to work on the following working day after October 15th? A. Because I was laid off. [573]

Q. I see. I show you General Counsel's Exhibit 31 in evidence, Miss Russell, and I ask you if you have ever seen a button similar to that before?

A. Yes, I have.

Q. Did you ever have one?

A. Yes, I wore a couple of them.

Q. You wore a couple of them? A. Yes.

Q. Where did you wear them?

A. On the collars or lapels of my shirt.

Q. Were the collars and lapels of your shirt outside any outer garment?

A. Yes, outside of the apron.

Q. The button was in plain sight, is that it?

A. Right.

(Testimony of Mary Russell.)

Q. Did you wear it at work? A. Yes, I did.

Q. Do you recall when it was that you received a union button?

A. I received it at a committee meeting, the night of the 13th, and I wore it the 14th and the 15th.

Q. And are you referring to the month of October? A. October, excuse me.

Q. And did you observe the other employees on the day shift on October 14th and 15th, 1954?

A. Yes. [574]

Q. What, if anything, did you observe about those employees?

A. I noticed that almost all of them were wearing the same buttons that I was wearing.

Q. And you are referring, are you not, to—

A. To the day shift. [575]

* * * * *

Q. All right. Now, after the election, after the lay-off of October 15th, 1954, at any time after that did you go out to the company?

A. Would you ask that again, please?

Q. Yes, I will. After you were laid off on October the 15th, 1954, after that date did you at any time go out to the company and talk to any representative of management? A. Yes.

Q. Can you tell us when it was, to the best of your recollection?

A. Well, it was about two weeks later, on a Monday morning.

(Testimony of Mary Russell.)

Q. And can you tell us about what time of day it was?

A. Approximately around ten in the morning.

Q. Will you tell us who was with you, if anybody? A. Lila Layman. [577]

Q. Will you tell us who you saw, what representative of the company?

A. Yes, we spoke with Mr. Martini.

Q. And where were you talking to Mr. Martini?

A. In the warehouse.

Q. Was anybody else present with him at the time?

A. Not at that time we spoke to him, no.

Q. Now, will you tell us to the best of your recollection today what was said and who said it.

A. Well, we walked up, both of us, telling him that we were looking for work, and wondering if they needed any help, and he said, at that particular time no, but they would later on, and he also told us that he would hire back the girls that had been laid off before putting on new help; and he, at the same time, made the remark that the unions were no good anywhere in the United States as far as canneries were concerned, but if it would have been a big industry such as the automobile industry it would be fine; and he also said that we should have thought it over seriously before jumping into this union deal, and we told him—or, Lila Layman told him that we had.

Q. What did he say to that, if anything?

A. I don't recall him saying anything to that.

(Testimony of Mary Russell.)

He had also at the same time asked us what our addresses were, and we told him, and he asked about our phone numbers and we told him that he had that in the office, and he said all right. [578]

Q. What, if anything else, was said?

A. And that's about all, to the best of my knowledge.

Q. Did you ever receive a call from the Company to go back to work? A. No, I did not.

Q. Directing your attention to the season of 1955— Strike that.

Since that time, have you ever gone out and looked for work at Sebastopol Apple Growers Union?

A. Yes, I have.

Q. When was that? A. That was—

Q. As best you can recall.

A. During the month of June, '55.

Q. Did you see— Strike that.

Do you recall when it was in June, 1955, that you went out, what day?

A. Not exactly, but I would say it was somewhere around the 15th, or perhaps a few days later.

Q. Was anybody with you at the time?

A. Yes.

Q. Who was with you?

A. Oh, Eva Lee and Lila Layman, Nora Ames, Valerie Cuttress, I believe the name is.

Trial Examiner: How do you spell that? [579]

The Witness: Valerie? [580]

* * * * *

(Testimony of Mary Russell.)

Mr. Karasick: Mr. Examiner, as the result of an off-the-record discussion, Counsel for the General Counsel and Counsel for the Respondent hereby stipulate and agree with respect to the following dates concerning the Representation case which is part of this consolidated proceedings, known on the Official Docket of the Board as 20-RC-2367; with respect to that matter, it is hereby stipulated that the Petition was filed by the Union in this case on August 17th, 1954, hearing was held with respect to that Petition on September 19th, 1954; the Board issued its decision and direction of election on October 4th, 1954, and the election was conducted on October 19th, 1954.

Is that a correct statement, and does Counsel so stipulate?

Mr. Berke: So stipulated.

* * * * *

Cross Examination—(Resumed)

Q. (By Mr. Berke): Miss Russell, you first went to work for Sagu last year on either July 23rd or July 24th? A. Yes. [586]

Q. And that was the first time you ever worked for the Company? A. That's correct.

Q. The cannery was in full operation at the time you went to work, was it not? A. Yes.

Q. Now, you worked for a period of time on the night shift, is that right? A. Yes.

Q. For how long, do you know?

A. Oh, from the time I started until about the 10th—from the 10th to the 13th of September.

(Testimony of Mary Russell.)

Q. You mean from about July 23rd or 24th to September 10th or 13th? A. That's right.

Q. And then you transferred, at your request, to the day shift? A. That's correct.

Q. And was this request to transfer to the day shift because you didn't like Mrs. Herrerias, the floorlady on the night shift?

Mr. Magor: Objected to on the ground it is immaterial.

Trial Examiner: Well, I don't know.

Mr. Berke: Bias and prejudice.

Trial Examiner: I will hear it. [587]

A. Well, that was one reason.

Q. (By Mr. Berke): Yes. And you worked on the day shift until October the 15th? A. Yes.

Q. When there was a change from two shifts to one shift? A. That is correct.

Q. Now, as I understand it, there was a conversation some time when you had your break, and this took place near the benches in front of the lounge? A. That's right.

Q. Do you know when that conversation took place?

A. I can't recall what night it was.

Q. It was while you were on the day or night shift? A. The night shift.

Q. And, as I understand it, you don't recall how that conversation started? A. No, I don't.

Q. You don't recall whether somebody asked a question of Mrs. Herrerias or just how it got started? A. No. [588]

* * * * *

ERMA BATE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * *

Q. (By Mr. Karasick): Mrs. Bate, did you, last season, work for Sebastopol Apple Growers Union?

A. Yes.

Q. Do you remember when you began work there? A. In July.

Q. And what was your job? A. Sorter.

Q. On what shift? A. The night shift.

Q. And who was your floorlady?

A. Ella Herrerias.

Q. After you came to work at the Company, did you sign a Union authorization card? A. Yes.

Q. Do you remember when you signed it?

A. In August. [597]

* * * * *

Q. (By Mr. Karasick): Except for the matter which appears on that card in ink, was the card you signed the same as the card I show you as General Counsel's Exhibit 28? A. Yes.

Q. Now, do you remember, were you at the plant at the time there was a lay-off of employees and reduction to one shift, on October 15th, 1954?

A. Yes.

Q. Did you attend a Union meeting shortly prior to that date? A. Yes.

Q. Do you remember the date of the meeting?

(Testimony of Erma Bate.)

A. October the 13th.

Q. At that meeting did you see a list of Union members who were employees of the Sebastopol Apple Growers Union? A. Yes.

Q. Did you secure a copy of that list?

A. Yes.

Q. In what manner?

A. I walked up to the desk and took it.

Q. Did anyone see you take it, as far as you know? A. No.

Q. What did you do with it after you took it?

A. I put it in the car.

Mr. Berke: She what? [598]

Mr. Karasick: She put it in the car.

Q. (By Mr. Karasick): In your car?

A. Yes.

Q. What part of the car?

A. In the glove compartment.

Q. Now, after that, did you give the list to anyone? A. Yes.

Q. To whom? A. Ella Herrerias.

Q. When did you give it to her?

A. The night of the 14th. [599]

* * * * *

Q. (By Mr. Karasick): Now, you say you gave this list to Mrs. Herrerias on the night of the 14th?

A. Yes.

Q. Do you remember about the time of day it was, or night? A. I think around 8:30.

Q. Where were you at the time?

A. On the belt.

(Testimony of Erma Bate.)

Q. And was anyone else present, immediately present, that could overhear the conversation?

A. No.

Q. Did Ella Herrerias come up to you, or did you come up to her? A. She came up to me.

Q. What did she say?

A. She wanted to know what was new and if I heard anything.

Q. What, if anything, did you say?

A. I told her I had something for her.

Q. All right. What happened then, what was said or done?

A. She said, "Good." I said it was in the car, I would get it for her.

Q. Now, where was your car?

A. Across the railroad tracks, by Mr. Martini's office.

Q. And what did you do then? Did you go over to the car and get it? A. I did. [600]

Q. And did she come with you? A. No.

Q. I see. Where was she?

A. She waited around the belt.

Q. Did you come back?

A. Did I—Pardon me?

Q. Did you come back to the belt then with the list? A. Part way to the belt.

Q. Then what happened?

A. I gave it to her.

Q. Now where was she when you gave it to her?

A. Standing by some boxes.

Q. Was anyone else present? A. No.

(Testimony of Erma Bate.)

Q. Did she say anything to you when you gave her this list? A. Yes.

Q. What did she say?

A. She said, "Thanks very much." She said, "I can't tell you how much I appreciate this, and Mr. Martini."

Q. Now, at the meeting—Strike that.

I hand you General Counsel's Exhibit 31 and ask you if you have ever seen a button like that before?

A. Yes.

Q. Did you have such a button, or get one?

A. Yes. [601]

Q. When? A. At the Union meeting.

Q. What date, do you remember?

A. October 13th.

Q. This same meeting you are talking about?

A. Yes.

Q. Did you wear the button? A. No.

Q. What did you do with it after you got it?

A. I left it home.

Q. Now, during the time that you worked there last season, did Ella ever talk to you about the co-op cannery? A. She did.

Q. Do you remember when that was?

A. About a week or ten days before the lay-off.

Q. And where were you at the time?

A. On the belt.

Q. Anyone else present? A. Yes.

Q. Who? A. Ernestine Hack.

Q. And who was she?

(Testimony of Erma Bate.)

- A. She is a sorter across from me.
- Q. Same job you had? A. Yes. [602]
- Q. And was she working across this belt?
- A. Yes.
- Q. Is it a moving belt? A. Yes.
- Q. What was it that Ella said to you at that time?

A. She said, "If this place goes Union, we are going to close it down, already six weeks of apples went to the co-op cannery on account of the Union."

Q. Now, did Ella ever talk to you about any list of people? A. Yes.

- Q. Do you remember when that was?
- A. A few days before the lay-off.
- Q. And where were you at that time?
- A. On the belt.
- Q. Anyone else present? A. Yes.
- Q. Who? A. Ernestine Hack.
- Q. What did Ella say to you at that time?

A. She said that she was making up a list, and that all the ones which would stick with her would be assured of a job, otherwise they would be black-balled from here down south.

Trial Examiner: Will you read me that answer.

* * * * *

Q. (By Mr. Karasick): Now, did you attend the meeting at which the names—Strike that.

Did you attend the meeting at which—in the warehouse on [607] October 15th, 1954, during which the Company announced that it was laying

(Testimony of Erma Bate.)

off employees and would reduce operations to one shift? A. Yes.

Q. Was there a list of names read at that meeting? A. Yes.

Q. Was your name read on the list?

A. No—I—no.

Q. Did you listen for it? A. Yes.

Q. Carefully? A. Very carefully.

Q. And it was not read? A. No.

Q. What did that mean, when your name wasn't read?

A. It meant I wasn't to perform work.

Q. It meant you were laid off? A. Yes.

Q. Now, what—was this meeting shortly after you came to work that night, the meeting in the warehouse was shortly after you punched in?

A. Yes.

Q. After the meeting was over, what did you do?

A. I went home.

Q. After you got home, did you receive any—well, what [608] happened after you got home?

A. Shortly after I got home I received a telephone call. [609]

* * * * *

Q. (By Mr. Karasick): Now, the next day did you receive any more phone calls through this same connection? A. Yes.

Q. When was it the next day?

A. About 8:30 in the morning. [611]

Q. Who called then?

(Testimony of Erma Bate.)

A. Ernestine Hack brought over a note from Ella, saying I was to call her.

Q. Now, this note was what, what did it consist of?

A. It gave Ella Herrerias' telephone number on a little pink slip of paper.

Q. And was her name on the paper, or just the telephone number?

A. Her name and telephone number.

Q. And what did Ernestine tell you about that?

A. Ernestine told me that Ella was very worried about me and wanted me to phone as soon as possible.

Q. Did you phone Ella Herrerias then?

A. I did.

Q. Did you reach her? A. Yes.

Q. Will you tell us what the conversation was between you? A. Yes.

Q. What did you say and what did she say?

A. She said, "Oh, I'm so worried about you; why didn't you come to me and see when your name—when you thought your name wasn't on that list?" and she said, "Well, you come up to the house and see me," and I did, I went up there.

Q. Now, how much later?

A. Within an hour. [612]

Q. Was anyone else present when you saw Ella at her house then? A. No.

Q. Will you tell us what the conversation was between the two of you on that occasion?

A. Ella said, "Why didn't you—why didn't you

(Testimony of Erma Bate.)

come to the office?" She said, "I was so worried about you, your name was on the list," and she said, "Did you know you could get me into an awful lot of trouble if you wanted to, because I confided in you an awful lot."

Q. Do you recall anything else she said on this occasion? A. Yes, I do.

Q. Would you relate it, please?

A. She said that Mr. Martini did not trust me because my husband was such a strong Union man, but she would fix this up so that I could go back to work.

Q. Did she ask you to go back to work?

A. Yes, she did.

Q. Did she tell you when? A. Yes.

Q. When did she tell you to go back?

A. Monday.

Q. Did you go back the following Monday?

A. I did.

Q. That is October 18th, 1954? [613]

A. Yes, yes.

Q. Were you put back to work?

Mr. Berke: October when?

Mr. Karasick: 18th, 1954.

Q. (By Mr. Karasick): Were you put back to work? A. Yes.

Q. Who put you back to work?

A. Ella Herrerias.

Q. What job, same job you had before?

A. Yes.

(Testimony of Erma Bate.)

Q. Did you continue to work for the balance of that season? A. Yes.

Q. As far as you know, were there any members of the Union still working in the plant after the lay-off of October 15th, 1954?

A. Yes, there was. [614]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Berke): At one time you and Mrs. Herrerias were good friends, were you not?

A. Yes.

Q. And you and Mrs. Herrerias some months ago had quite an argument, did you not?

A. No.

Q. And Mrs. Herrerias accused you of making false statements about her and not being a true friend? A. No.

Q. You are still her friend?

A. I haven't seen her.

Q. No, but how long has it been since you haven't seen her? A. Oh, I don't remember.

Q. I see. You were friends, besides being a co-employee, were you not? A. Pardon me?

Mr. Berke: Do you want to read it to her?

(Question read.)

Q. (By Mr. Berke): Besides being a co-worker, you were a good friend of hers?

A. I wouldn't say a good friend, no.

Q. No? You aren't today, are you?

Mr. Karasick: Well, I submit, Mr. Examiner, I know the purpose of this, and I think Counsel

(Testimony of Erma Bate.)

should have broad lee-way; asking this witness' opinion on the strength of the friendship or whether you are a good friend or not is a distinction of such nicety I think it is objectionable.

Trial Examiner: Well, I will allow it.

Mr. Karasick: All right. Do you remember the question?

The Witness: Will you repeat it, please.

Mr. Berke: Will you read it, Mr. Reporter.

(Question read.)

Trial Examiner: Do you understand the question?

The Witness: Yes, I do.

Trial Examiner: Will you answer it.

The Witness: I don't see how I am going to answer that question.

Q. (By Mr. Berke): Do you mean you can't or you don't want to?

Mr. Karasick: If you know the answer to the question, answer it, Mrs. Bate.

The Witness: I don't know the answer. [619]

* * * * *

Q. (By Mr. Berke): You had been to Mrs. Herrerias' house a number of times before October 15th, had you not? A. No.

Q. You had not? A. No.

Q. Had you been there once before October 15th? A. No.

Q. Never been there before that date?

A. Not that I recall. [625]

* * * * *

(Testimony of Erma Bate.)

Q. Mrs. Bate, Mr. Grami—You know who he is, don't you? A. Yes.

Q. He is one of the representatives of Local 980? A. Yes.

Q. Did Mr. Grami have a talk with you about that list? A. No.

Q. Didn't Mr. Grami ask you about your taking that list and what you had done with it?

A. Yes.

* * * * *

Q. All right. And didn't you at that time, when you were talking with Mr. Grami about the list, deny that you had given Mrs. Herrerias the list?

A. Yes.

Q. Were you telling Mr. Grami the truth at the time?

* * * * *

Q. (By Mr. Berke): When was it you had this conversation with Mr. Grami?

A. I don't remember.

Q. Sometime after October the 15th, was it?

A. I don't remember. [628]

* * * * *

Trial Examiner: Now, you were asked on cross examination if you gave the list to Mrs. Herrerias at that time and—

Mr. Karasick: At what time, Mr. Examiner?

Trial Examiner: At the time when she went to Mrs. Herrerias' house, on October 16th, the day after the lay-off.

Mr. Karasick: Oh.

(Testimony of Erma Bate.)

Trial Examiner: And your answer was you did not?

The Witness: Correct.

Trial Examiner: Then you said you didn't recall being at Mrs. Herrerias' house on October 16th. Do you have any explanation?

The Witness: Yes, I can't recall all those dates, but I was at her house October the 16th. [635]

* * * * *

ERNESTINE HACK

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination [640]

* * * * *

Q. (By Mr. Karasick): Mrs. Hack, did you work last year at Sebastopol Apple Growers Union?

A. Yes.

Q. Do you recall when you began work there?

A. July the 19th, 1954.

Q. And what was your job?

A. Sorting apples.

Q. And what shift? A. Night shift.

Q. Who was your floor lady? A. Ella.

Q. Ella Herrerias?

A. Herrerias, yes.

Q. After you came to work for the Company, did you sign a Union authorization card?

A. Yes, I did.

Q. Except for the matter on the card which is written in ink, was the authorization card you

(Testimony of Ernestine Hack.)

signed identical with General Counsel's Exhibit 28,
which I now show you? A. Yes.

Q. Do you remember the date you signed that
card? A. August 10th. [641]

Q. After you came to work at the Company, do
you remember a time, any time when Ella Herrerias
talked to you about the co-op cannery?

A. Yes.

Q. Do you remember about when that was?

A. It was in October, about a week before the
meeting.

Q. And is the meeting you are referring to the
meeting of October 15th, 1954, of the lay-off, when
the employees were notified there was a lay-off?

A. Yes.

Q. Where were you at the time?

A. The belt.

Q. Anyone else there too?

A. The workers.

Q. Besides you and Ella, was anyone else—was
your partner on the belt at that time?

A. Yes.

Q. Who was that? A. Erma Bate.

Q. Will you tell us now, as well as you can re-
call, what Ella Herrerias said to you about the co-op
on that occasion?

A. Well, she said we lost six weeks of apples to
the co-op and if the place went Union we'd close
down. [642]

* * * * *

Q. On any other occasions in addition to the one

(Testimony of Ernestine Hack.)

I have asked you about, while you were working there last season, did Ella talk—make any statements about the Union that you can recall?

A. Yes. [645]

* * * * *

Q. (By Mr. Karasick): All right. Now, with the earliest point of time that you can remember, with the statement in mind that you have, when was the earliest of these statements in terms of the time you came to work there? A. In September.

Q. Can you establish a date any closer than that, latter half or middle?

A. Well, about the middle of September.

Q. About the middle of September. Where were you at the time? A. The belt.

Q. Same place? A. Yes.

Q. Was Erma present on that occasion?

A. Yes.

Q. Anyone else, to your knowledge?

A. No.

Q. What were the statements made by Mrs. Herrieras on that occasion?

Mr. Berke: I am going to object to that. Let's get the conversation.

Mr. Karasick: Very well, Counsel. [646]

Q. (By Mr. Karasick): What was the conversation, as well as you can recall it?

A. Well, anybody that joined the Union would be black-balled all the way down the line.

Q. This is what Ella said? A. Yes.

* * * * *